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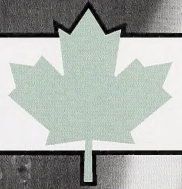


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Legal Studies 2020
Labour Law
Student Module Booklet
Learning Technologies Branch
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This document is intended for	
Students	✓
Teachers	✓
Administrators	
Home Instructors	
General Public	
Other	



You may find the following Internet sites useful:

- Alberta Education, <http://www.education.gov.ab.ca>
- Learning Technologies Branch, <http://www.education.gov.ab.ca/lrb>
- Learning Resources Centre, <http://www.lrc.education.gov.ab.ca>

Exploring the electronic information superhighway can be educational and entertaining. However, be aware that these computer networks are not censored. Students may unintentionally or purposely find articles on the Internet that may be offensive or inappropriate. As well, the sources of information are not always cited and the content may not be accurate. Therefore, students may wish to confirm facts with a second source.

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WELCOME

Welcome to Legal Studies 2020. We hope you enjoy your study of Labour Law.



- Employment Relationships
- Unions and Collective Bargaining



- Employment Insurance and Workers' Compensation
- Women in the Workplace



- Challenging Issues
- Law-related Careers

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CAREER AND TECHNOLOGY STUDIES INFORMATION

Legal Studies is one of the 22 strands of Career and Technology Studies designed for Alberta secondary students. The optional CTS program will provide you with opportunities to

- investigate career options and make effective career choices
- use technology effectively and efficiently
- apply and reinforce concepts you learned in other courses
- prepare you for entry into the workplace or further learning

The strands in Career and Technology Studies are designed to stand alone or be integrated with other strands or school courses to meet your learning needs.

CTS has a number of basic competencies (knowledge, skills, and attitudes) that will be identified throughout by these icons:



Careers: Identify appropriate career linkages within the strand being studied.



Communication: Effectively present concise written, visual, and oral communications.



Ethics: Make judgements about whether behaviour is right or wrong on personal, community, and global levels.



Technology: Effectively use technology when required.



Innovation: Recognize opportunities and problems, and identify and suggest new ideas.



Task Management: Demonstrate an ability to locate and use resources and an ability to use time effectively.



Teamwork: Work towards goals co-operatively, collaboratively, or independently, and acknowledge the opinions of others.



Safety: Assess potential risks, and follow personal and environmental safety procedures.

These basic competencies build skills that are useful in a broad range of lifetime endeavours.

The eight icons described above indicate to you that a basic competency has been identified in a lesson. Note, however, that some of these competencies might relate more to one strand than another, so it might be that not all icons will appear in this particular course.

Note carefully that CTS courses are competency based; you must, therefore, successfully complete each component to receive credit for the course.

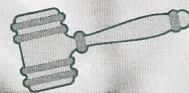
LEGAL STUDIES STRAND INFORMATION



Introductory



Intermediate



Advanced

Personal Context

LGS 1010
You and the Law 1:
As a Consumer and
as a Family Member

LGS 1020
You and the Law 2:
In Society and
in the Workplace

Societal Context

LGS 2010
Family Law

LGS 2020
Labour Law

LGS 2030
Environmental Law

LGS 2050
Law and the Traveller

LGS 3010
Consumer and Property Law

LGS 3020
Dispute Resolution

LGS 3040
Negligence

LGS 3050
Law and Small Business

LGS 3060
Controversy and Change

LGS 3070
Landmark Decisions

LGS 3080
Criminal Law

-- Recommended sequence

Some of these courses may not yet be in a distance learning format.



LEGAL STUDIES 2020 OVERVIEW



Do you by any chance have a part-time job? Perhaps you're working evenings or weekends as a cashier or a salesclerk. Or maybe you pump gas on Saturday or serve in a restaurant. If you don't have a job now, chances are good that you'll have one before long.

As an employee, do you know what your legal rights and obligations are? Do you understand things like deductions taken from your paycheque, vacation and overtime pay, dismissal, and harassment in the

workplace? Are you familiar with your employment contract? Do you know what your obligations are to your employer and what your employer's obligations are to you? If you work for a company with unionized employees, do you understand all the implications? Do you know what collective bargaining is?

In this course you'll be investigating questions like these. In Section 1 you'll examine employment relationships in general; then in Section 2 you'll look more closely at the laws regulating what goes on in the workplace. Finally, in Section 3 you'll turn to unions and collective bargaining and learn just how the latter changes the rights and obligations of employers and employees. You'll also be choosing an issue in the area of labour law that's currently challenging lawmakers; you'll be investigating it on your own and writing up your findings in a short report.

Legal Studies 2020 Labour Law



Section 1
Employment Relationships



Section 2
The Workplace and the Law



Section 3
Collective Bargaining and
Challenging Issues

Assessment and Feedback

This course is worth one credit and is comprised of three sections. Within each section, your work is grouped into lessons. Within the lessons, there are readings, explanations, and questions for you to work through. You'll correct your work yourself using the suggested answers that follow each lesson. These suggested answers will provide you with immediate feedback on your progress.

Accompanying this Student Module Booklet are two Assignment Booklets. You'll be referred to the assignments in these booklets from time to time as you work through the course—frequently at the end of a section. Your work in these booklets will be submitted to your teacher for assessment, and at least a portion of your grade will be based on them. The mark distribution is as follows:

Section 1 Assignment	20 marks
Section 2 Assignment	35 marks
Section 3 Assignment	45 marks
TOTAL	100 marks

Be sure to check with your teacher if this mark allocation is valid for you. Some teachers like to include other reviews and assignments.

In addition to your assignments, you will likely be required to complete a final test. The weighting for this final test will be determined by your teacher.

Resources

In order to complete Legal Studies 2020, you'll need the following resources:

- the course textbook, *All About Law*, fifth edition, by Gibson, Murphy, Jarman, and Grant (Thomson/Nelson Canada, 2003)
- a notebook or binder in which to respond to questions asked in this Student Module Booklet

You should have access to a computer and complete your assignments with a word-processing application wherever possible. As well, you should arrange to have access to the Internet. Though it won't be mandatory, some Going Further activities may direct you to watch a live or recorded television show.

LearnAlberta.ca

LearnAlberta.ca is a protected digital learning environment for Albertans. This Alberta Education portal, found at <http://www.learnalberta.ca>, is a place where you can support your learning by accessing resources for projects, homework, help, review, or study.

For example, LearnAlberta.ca contains a large Online Reference Centre that includes multimedia encyclopedias, journals, newspapers, transcripts, images, maps, and more. The National Geographic site contains many current video clips that have been indexed for Alberta Programs of Study. The content is organized by grade level, subject, and curriculum objective. Use the search engine to quickly find key concepts. Check this site often as new interactive multimedia segments are being added all the time.

If you find a password is required, contact your teacher or school to get one. No fee is required.

Visual Cues

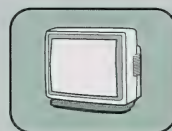
As well as the CTS basic-competency visual cues presented earlier, from time to time you may encounter the following cues or icons in the margin of this Student Module Booklet. Be sure you understand what they're prompting you to do.



Textbook



Internet



Television

Remember that any website address given in this course is subject to change.

Strategies for Completing This Course

Organize your materials and work area before you begin. Be sure that you have everything that you need. You should also have a quiet area in which to work, away from distractions. Create a schedule for yourself, and display it as a reminder.

Because one of the basic competencies of the CTS program involves skills in working with others, you're encouraged to work with a partner throughout the course if possible. Your partner can be a friend, classmate, or family member. You don't need to work with the same partner all of the time. If you can't work with a regular partner, it would help if there were someone—a family member perhaps—with whom you can work from time to time.

The Going Further boxes that you'll encounter in the Student Module Booklet signal optional enrichment material. Going Further provides opportunities for you to investigate or research a topic or concept that you've explored in the lesson and that particularly interests you. Going Further may also give you a chance to apply your knowledge and skills in a practical way. You're encouraged to read the Going Further suggestions and to attempt these enrichment activities whenever possible.

To achieve success in this course, be sure to read all the directions carefully; work slowly and systematically through the material in the Student Module Booklet. This approach will ensure that you're prepared for your assignments. Try to set realistic goals for yourself each day and each week so that you'll complete the course in a reasonable time. Do your assignments regularly, and don't forget to review and proofread your work before sending it to your teacher. Careful work habits will greatly increase your chances for success in Legal Studies 2020.

SECTION 1

Employment Relationships



As a high school student, you're probably beginning to think about life after school. Do you have any ideas about what you want to do when you eventually join the work force? Do you feel you're ready for the world of work? Do you understand the legal implications of working for a living?

In this section you'll get an introduction to some of the legal aspects of being a member of the work force. When you've finished the section, you should be able to identify the three basic types of employment relationships and to describe employers' and employees' fundamental responsibilities to each other and their liability to third parties. This knowledge should give you the background you'll need to dig more deeply into labour-law issues in Section 2.

Lesson 1: Types of Employment Relationships



Have you ever had a summer job or, perhaps, some form of after-school employment? If so, did you have a clear understanding of just what your rights and duties were? Would you have known if your boss had gone beyond his or her rights in giving you an order?

1. To get you thinking about the rights and obligations of employees and employers, take the short Alberta Employment Quiz that follows and see how well you do.

Alberta Employment Quiz

- a. What is the minimum wage for workers in Alberta?
- b. How much notice must an employer in Alberta give an employee whose position is being terminated if the employee has worked for more than three months?
- c. What is the maximum number of consecutive hours you can be required to work in one day in Alberta?
- d. Are there any hours of the day during which employees under the age of 18 can't be required to work? If so, what are they?
- e. How many hours can an adolescent employee be required to work on a school day?
- f. What's the minimum rate for overtime pay in Alberta?
- g. After a year of employment, how much vacation time is an employee entitled to?
- h. Are employees who are adopting a child in Alberta entitled to time off work? If so, how much time?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

How well did you do? Don't worry if you didn't get many answers right; when you've finished this course, you should know a great deal more about Alberta's labour laws.

The Three Levels of the Law

The first thing to understand in looking at the law that governs employment is that there are three levels of law at work; and to understand that, you have to have a bit of background.

The Common Law

The fundamental basis of all law in our society is what's called the **common law**. The common law is the body of law that has developed over the centuries as judges decided the cases they heard. The judgements they made became **precedents** that later judges were to follow in similar cases. In this way, a large and ever-growing body of judge-made law was gradually created; and it remains today the basis of our legal system today.



common law:
*the body of law
that gradually
developed as judges
in English courts
made decisions
in the cases they
heard*

precedent: *a
previous court
decision that lower
courts must follow
when making
decisions in similar
cases*

statute: *a law
passed by a
governing body*

Statute Law

In more recent times, governing bodies like the Parliament of Canada and the various provincial and territorial legislatures have passed—and continue to pass— what are known as **acts**. These acts, called **statutes** once they've come into effect, become law; and the body of law built up this way is known as *statute law*.

Statutes override the common law; in other words, if the common law says one thing and a statute another, it's the statute that the courts go by. However, if a statute is repealed (withdrawn) by the government, or if it simply doesn't state anything on a certain legal issue, the common law remains the authority on that issue.

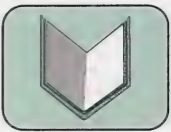
Employment Contracts

When two people agree that one of them will work for the other, an employment contract has been created. As you'll see later on, some of these contracts are very simple oral agreements, while some are complex contracts written out in minute detail. Either way, the two parties involved can agree on things that go beyond what's laid out in the common law and statute law, provided that the minimum conditions stipulated in those laws are met.

For instance, the minimum wage in Alberta is currently \$7.00 an hour; this is laid out in an Alberta statute. However, many employers and employees agree on a pay scale far beyond this minimum. When this happens, the contract takes priority; it determines what the employer's and employee's rights and obligations are.



All this may sound complex, but it really isn't. Just remember that if you're an employee, the first place to look for your rights and obligations is your employment contract. The next place is the statute law governing labour relations. Finally, if things still aren't clear, you can fall back on the common-law principles that have evolved over the centuries.



To get a better understanding of where to look for your rights and obligations as an employee, open your textbook to page 571 and read the material under the heading "Common Law, Statute Law, and Employment Contracts." When you've finished the reading, answer the question below.

2. Sari takes a job that she agreed to do for \$5.50 an hour. Shortly after beginning work, she learns that an Alberta statute sets \$7.00 an hour as a minimum wage. When Sari speaks to her boss, he tells her, "You contracted to work for \$5.50 an hour, and our contract takes precedence over any statute law."

Is Sari's boss right? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

Three Kinds of Employment Relationships



The legal relationships existing between two people, one of whom works for the other, can be of different types. Three fairly common such legal relationships are

- the master/servant relationship
- the principal/agent relationship
- the client/independent contractor relationship

For the most part, the focus of this course will be on the master/servant relationship—what people normally call the *employer/employee relationship*; however, you should understand how this differs from the other two types.

Clients and Independent Contractors

independent contractor:
a person who contracts with another party to do a specific task without direction from the hiring party

These days we hear a great deal about **independent contractors**. As more and more people over the last decade or two have lost their jobs due to company downsizing, many of them have set themselves up as contractors. This means that they're not employees at all; rather, they're in business for themselves. When they encounter someone or some organization in need of their skills, they can contract with that person or organization to do a specific piece of work for an agreed-upon payment. Such a party becomes the contractor's client. Of course, not all independent contractors are the result of downsizing; there have always been many people who prefer to be their own bosses and to work this way. In recent years, however, there has been an explosion of this type of employment relationship.

To learn more about independent contractors, turn to page 594 of your textbook and read the material in section "19.5: Independent Contractors" as far as, but not including, the heading "Self-Employment." When you've finished, answer the following questions.

3. a. Being an independent contractor rather than an employee has both advantages and disadvantages. Construct a chart like the one that follows; then take a few minutes to list as many advantages and disadvantages as you can. If you have a study partner or are working in a group, brainstorm for ideas.

Independent Contractors	
Advantages	Disadvantages

- b. Which would you rather be, an independent contractor or an employee? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

Principal and Agent

agent: a person hired to represent another party and to act on that party's behalf

principal: a person who hires another person to act as his or her agent

The chief thing to know about the principal/agent relationship is that **agents** represent the **principals** for whom they work and can enter into contracts on their behalf. Ordinary employees can't do this. Examples of people who are in the position of agents are insurance agents, stockbrokers, and real estate agents, all of whom have the legal power to make contracts for those who employ them. If a person wants to buy stock in a company, for instance, that person can call a stockbroker and direct him or her to buy so many shares. The broker then has the authority to go out and negotiate a purchase, and the buyer must pay the price the broker has agreed upon.



4. Tell whether the individuals in each of the following illustrations is an agent, an independent contractor, or an employee.
- a. A mother tells her son to buy a litre of milk at the corner store. The boy is acting as an _____.
 - b. An auctioneer is employed to make sale contracts between his employer and third parties. He is an _____.
 - c. A lawyer makes contracts with third parties for those who employ her. The lawyer is acting as an _____.
 - d. A short-order cook is hired to make burgers at a fast-food outlet. This cook is an _____.
 - e. A pizza-delivery person stops to gas up the company car using the restaurant's credit card. This person is acting as an _____.
 - f. An editor contracts with a publishing company to edit a new book in two months' time for a set fee. This editor is an _____.
 - g. A backhoe operator who owns his own machine agrees to dig a trench for a gas line to a new farmhouse. This operator is acting as an _____.
 - h. A teacher is hired to teach high school English language arts by the local school board. This teacher is an _____.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

contract: a legally binding agreement between two or more parties

express contract: a contract in which the terms are specifically laid out

implied contract: a contract that is suggested by the actions of the parties

An agency relationship usually results from a **contract** between principal and agent. If you've taken Legal Studies 1010, you'll remember the basics of contract law. You should recall that a contract can be either express or implied. An **express contract** is one in which the terms and conditions are clearly defined and understood by the parties. By contrast, an **implied contract** is one that the parties understand without the terms having been specifically stated.

An example of an express contract establishing an agency would be an agreement between a professional hockey player and his agent. The contract would clearly specify what the agent is free to negotiate on behalf of the player—the principal.



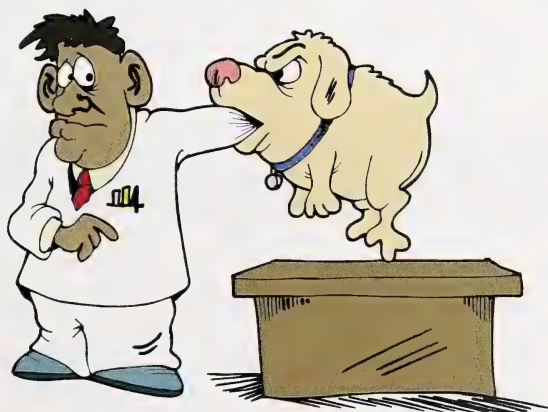
I've got an example of an implied contract. My cousin used her mother's credit card and her mother (the principal, I guess) made the payment. That legally implied that my cousin was acting as her mother's agent—and that her mother would make future payments as well.



ratification: the act of accepting responsibility for a contract by someone not previously bound by it

An agency can also be created by **ratification**. In this situation, the agent at first has no authority to act for the principal, but the principal accepts the agent's act and treats it as if it had been authorized. Ratification doesn't have to be in writing. For example, imagine that you took your mother's lawn mower to a local repair shop without telling her and had it fixed, leaving instructions to send her the bill. Then imagine that your mother, grateful for your effort, did pay for the work done. By paying the bill, your mother ratified the contract you made, thereby making you her agent by ratification.

Another way of creating an agency is by necessity. This happens when there's an emergency and to deal with it, someone enters into a contract on behalf of another. If you're alone with the family dog and she suddenly starts choking on a bone, you'd be acting responsibly if you got her to the vet for help. If you then contract with the vet on behalf of your parents to look after the dog, you're acting as an agent by necessity, thereby making your parents responsible for paying for the service later on.



5. Construct a chart like the one that follows, and complete it by telling whether each agency established was created by
- an express contract
 - ratification
 - necessity
 - an implied contract

Agency	Means of Creation
Jon regularly shops for his mother. The local merchants keep a tab, which she pays each month.	
Heddy, an artist, finds it hard to promote her own work. She hires Suzanne to arrange showings in local galleries.	
Connor is fed up with the delays in getting his soccer team new uniforms. He contracts with a merchant to supply the uniforms, and his teammates like them so much they agree to pay for them.	
Holly almost drives her father's Ferrari over a cliff. Afraid that the vehicle will slide into the river, she contracts with a local farmer to haul it to safety with his tractor on the understanding that her father will pay for the service.	
Owen finds Mr. Batiuk's prize-winning bull suffering from severe bloat. He calls the vet out to save the bull because the Batiuks are away for the weekend.	
For years, Gillian has bought food on credit at the cafeteria where she works. The cafeteria bills Gillian's mother at the end of each month, and the bill is always paid.	
Liam asks his daughter to help him organize a party. She gets carried away and hires expensive caterers on her father's credit. Liam learns too late what's happened, so he pays the bill and chalks the situation up to experience.	



6. Lawyers generally advise people who discover others acting as their agents without their consent to immediately deny that an agency exists and to inform anyone with whom contracts have been made by these so-called agents that they won't honour them. Suggest a reason for this advice.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

When agents and their principals have express contracts, they're free to set up their agreements as they see fit. For things they don't explicitly agree on, however, the common law stipulates certain duties or obligations each party has to the other. The chart that follows outlines the main common-law duties of agent and principal.

Common-Law Duties of Agent and Principal	
Agents	Principals
<ul style="list-style-type: none"> • must carry out duties diligently and with the skills for which they were hired • must give an account of any money with which they were entrusted • must not sell their own chattels (goods) to the principals unless the principals know and agree to this • must not deal in a line of goods similar to the principals' unless the principals agree 	<ul style="list-style-type: none"> • must pay agreed-upon fee plus any expenses • must render an account to agents working on commission so they'll know what they're owed • are liable for any torts the agents commit (Torts are injuries done to other parties; you'll be hearing more about this later.)

Master and Servant



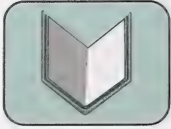
And that brings you to the most common type of employment relationship—that historically known as the *master/servant relationship*.

Today the words **master** and **servant** sound very much out of place; they have connotations people understandably find offensive. For this reason, most people now speak of an *employer/employee relationship*. Throughout this course when you encounter the terms *employer* and *employee*, the references are to what has traditionally been called *master* and *servant* unless you're specifically told otherwise.

Whichever expression is used, however, this is the sort of employment relationship you're most likely to find yourself in the near future; you may already have had experience with it.

master: an employer; someone who hires another person (the servant) to work under his or her supervision

servant: an employee; someone hired by an employer (the master) to work under his or her supervision

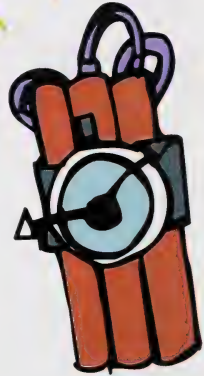


You'll be examining the employer/employee relationship as it exists in Alberta in a good deal of detail in future lessons. To get an idea of the basic common-law rules governing this sort of employment relationship, however, turn to page 572 in your textbook and read the material on that page. Pay close attention to the common-law duties listed under the heading "Common Law and Employment." When you've completed this reading, answer the following questions.

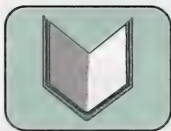
breach: a failure to perform an obligation under a contract

7. According to common-law principles, which of the following would be considered by the courts to be a **breach** of duty by either an employer or an employee?

- a. An employer pays an employee less than an agreed-upon wage, saying that the quality of her work isn't good.
- b. An employee sleeps in after celebrating his thirtieth wedding anniversary and is half-an-hour late for work.
- c. A police department hires a specialist to defuse bombs of all sorts and then expects her to defuse a type of explosive device unfamiliar to her.
- d. An employee regularly steals money from his employer's cash register.
- e. An employer insists that her employee quit his other (evening) job because he's liable to become too tired to work well.



8. According to common-law principles, an employer must give an employee being dismissed "reasonable" notice (the courts decide what's reasonable under the circumstances). If a court finds that an employee has been dismissed without adequate notice, it won't ordinarily force the employer to rehire the person; rather, the employer will be required to pay money to the employee to replace the notice that should have been given. Suggest a reason for this.



plaintiff: the party bringing a legal action against another party in civil (non-criminal) court

defendant: the party against whom a legal action is brought in civil court or the party charged in a criminal case



9. Read the case study *Gilmour v. Mossop* on page 573 of your textbook. If case studies like this are new to you, note that the title tells you the names of the **plaintiff** (Gilmour) and the **defendant** (Mossop). The "v" stands for *versus*.

When you've read the case study, answer the four textbook questions that follow it.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



Today it's rare for disputes between an employer and employee to be decided on common-law principles. That's because governments have passed statutes laying down far more precisely just what people's rights and obligations are in the world of work. But if something comes up that a statute doesn't address, it's the common law that the courts will fall back on.

Unlike agents, employees (servants) can't make contracts on behalf of their employers (masters). Employees are also subject to a good deal more control from their employers than agents and independent contractors. Employees may be paid a salary or wages, or they may be paid a commission. They may be paid both a salary and a commission.

Although more and more people today are working as independent contractors, most people in the work force remain employees, governed by the laws that regulate the master/servant relationship. The next lesson will explain in greater detail the legal aspects of both the employer/employee and principal/agent relationships; but for the rest of the course, the emphasis will be on the employer/employee situation.

Suggested Answers

1. Here are the answers to the Alberta Employment Quiz as the situation stood in 2005. (Remember, rules and regulations of this sort can and do change from time to time.) See how well you did.
 - a. The minimum wage for workers in Alberta is currently \$7.00 an hour.
 - b. An employee who has worked for more than three months but less than two years must be given one week's notice of termination.
 - c. With some exceptions (for example, people servicing oil wells), workers can be required to work no more than 12 consecutive hours in one day.
 - d. Employees over the age of 15 but under 18 can't be required to work between the hours of midnight and 6:00 a.m. in a retail store, a gas station, or in a hotel, motel, or any business of that sort. Employees over 12 but under 15 can't work between 9:00 p.m. or 6:00 a.m. under any circumstances.
 - e. An adolescent employee (defined as over 12 but under 15) can be required to work no more than two hours on a school day.
 - f. The minimum rate for overtime pay is 1.5 times the employee's wage rate.
 - g. After working one year, an employee is entitled to a minimum of two weeks' vacation with pay.
 - h. Yes, employees adopting a child are entitled to 37 weeks of unpaid leave if they've worked for their employer for a full year. A father and mother may split this time however they choose, and are entitled to Employment Insurance benefits while off work.

2. No, Sari's boss is wrong. The minimum-wage law sets out just that—the minimum wage employers can pay employees in Alberta. In negotiating her employment contract, Sari might have been able to convince her boss to give her more than \$7.00 an hour, but by law her boss can't pay her less.
3. a. Charts will vary somewhat. Compare your ideas with the one that follows.

Independent Contractors	
Advantages	Disadvantages
<ul style="list-style-type: none"> • have more independence • can pick and choose the jobs they do • have more opportunity to expand their businesses • may get more credit and respect for work done • can charge what the market will bear 	<ul style="list-style-type: none"> • have less job security • take more risks in relation to profit and loss • must pay own premiums for things like Canada Pension and employment insurance • must supply their own material • must pay any employees

- b. Answers will vary. The chart for question a. points out that being an independent contractor involves more risk and responsibility, but the chance for increased rewards and developing an independent business appeal to many people. Ultimately, your answer depends on the sort of person you are; some people are willing to make great sacrifices to take more control over their working lives while others prefer the security offered by employment in another's business.
4. a. agent
 b. agent
 c. agent
 d. employee
 e. agent
 f. independent contractor
 g. independent contractor
 h. employee

5.

Agency	Means of Creation
Jon regularly shops for his mother. The local merchants keep a tab, which she pays each month.	implied contract
Heddy, an artist, finds it hard to promote her own work. She hires Suzanne to arrange showings in local galleries.	express contract
Connor is fed up with the delays in getting his soccer team new uniforms. He contracts with a merchant to supply the uniforms, and his teammates like them so much they agree to pay for them.	ratification
Holly almost drives her father's Ferrari over a cliff. Afraid that the vehicle will slide into the river, she contracts with a local farmer to haul it to safety with his tractor on the understanding that her father will pay for the service.	necessity
Owen finds Mr. Batiuk's prize-winning bull suffering from severe bloat. He calls the vet out to save the bull because the Batiuks are away for the weekend.	necessity
For years, Gillian has bought food on credit at the cafeteria where she works. The cafeteria bills Gillian's mother at the end of each month, and the bill is always paid.	implied contract
Liam asks his daughter to help him organize a party. She gets carried away and hires expensive caterers on her father's credit. Liam learns too late what's happened, so he pays the bill and chalks the situation up to experience.	ratification

6. This advice is usually given because if a person in this situation ratifies the contracts made by the "agent" by honouring them, an agency-by-ratification or implied contract is created. This will give others the legal right to assume that the person will honour future contracts made by the person acting as agent, and the person who finds him- or herself now acting as principal will be legally obligated to honour them.
7. a. This is a breach of the duty to pay the agreed-upon wage. If employers aren't happy with the quality of their employees' work, they can dismiss them; but they must pay them for the work they've done at the rate agreed upon.
- b. Technically this is a breach of the employee's duty to be punctual, but if it happened just the one time, an employer would have a hard time convincing a judge that the employee was really in breach of the employment contract. An employee who is regularly punctual can be forgiven the odd transgression.
- c. This isn't a breach of the employer's duty because the task assigned falls within the employee's assigned duties. The employer would, however, be wise to find someone with more familiarity with this type of explosive or to use a robot or some other way of dealing with the situation. Employers do have a duty to provide a safe working environment for their employees, but this has to be taken in the context of the job. Someone hired to work with explosives has to assume a greater level of danger on the job than would ordinarily be the case. Normally this fact would also be reflected in their wages.

- d. This is a breach of the employee's duty to be honest. Of course, it's also a criminal offence.
 - e. This is a breach of an employer's duty to allow employees to have a second job. The employee may well be able to handle both jobs; and if it turns out that he does become too exhausted to perform his tasks properly, his employer can dismiss him for incompetence (though hopefully she'd try to convince him to give up his other job first).
8. The reason is that it's unlikely the working relationship would be very productive or happy at this point. It's usually better to use money to right the wrong done and to allow both parties to go their own ways.
9. **Textbook question 1:** Mossop had a duty to provide a safe place of employment.

Textbook question 2: It seems that he did. His daughter spent two weeks living in the house explaining the job to the defendant. The defendant had been warned that the dogs liked to lie on the stairs.

Textbook question 3: The appeal court found them adequate. There was a light at the bottom of the stairs, and the defendant could have turned on the kitchen lights to illuminate the top of the stairs. It's true that there was no railing, but the court decided that this hadn't been a factor.

Textbook question 4: The appeal court pointed out that, according to common-law principles, a person who contracts to do a job assumes the ordinary risks that go along with that job. The defendant had been warned and well trained, and she could have turned on more lights. Do you agree with this position? Can you back up your ideas with arguments?

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Lesson 2: Rights, Duties, and Liabilities: A Closer Look



Imagine that you hire an agent to sell some property, telling her the price range you expect to get for it. Anxious to get her commission and doubting that you'll ever get the price you're after, she goes ahead and sells for less. Must you honour the contract? Must you pay her a commission?

Now suppose that you have a furniture-moving business. One day, one of your employees loses his grip on a fridge while halfway up a flight of stairs. It tumbles down the stairs and seriously injures someone walking up behind. Are you liable in the eyes of the law for the injury caused by your employee?

Now that you have a basic idea of the principal types of employment relationships, it's time to take a somewhat closer look at the basic rights, duties, and liabilities of employers, employees, principals, and agents. You've made a start on this in the preceding lesson; in Lesson 2 you'll build upon what you learned there.

Principal and Agent

A principal has a duty to pay—or *remunerate*—his or her agent for services rendered. It's important to note, though, that remuneration is owed only where the agency was created by a contract; in other words, a principal has to pay only for things an agent has expressly contracted to do. It probably goes without saying that if an agent becomes involved in any illegal transactions while carrying out his or her duties, the principal isn't obligated to pay remuneration.

liability: a legal responsibility for harm done to another

In return, an agent has a duty to hand over to the principal any money he or she receives for the principal in the course of carrying out transactions. The agent is obligated to keep the principal's money separate from his or her own; that usually means putting it temporarily into "in trust" accounts. An agent must keep proper accounts and produce them whenever the principal asks to see them. Note also that an agent isn't permitted to make a **secret profit** while performing his or her duties.

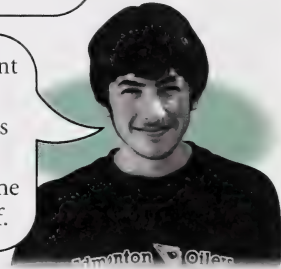
secret profit:

a financial advantage received by an agent over and above what he or she is entitled to receive from the principal



Another thing to remember is that an agent can't legally sell his or her own property to the principal unless the principal explicitly agrees. This is to ensure that agents really are working to get the best deals they can for their principals.

Yeah, I can see the problem with that. I mean, an agent hired to buy something for a principal might deliberately ignore really good deals and then sell his or her own stuff to the principal at a relatively high price. The agent would make a profit—the sale and the commission—and the principal would get ripped off.



1. Mr. Carridine employed an agent, who was acting without a commission, to buy an outfit for the principal's son. The agent managed to obtain a discount on the purchase, but didn't reveal this to the principal, Mr. Carridine. Rather, she tried to charge the principal the full price.

Could the principal be legally compelled to pay this full amount? Why or why not?

2. Read the following case study and answer the questions that follow it.

In the case *Johnson v. Birkett* (1910), the plaintiff, Johnson, had instructed the defendant, Birkett (who was a stockbroker) to buy some shares for her in a company at a set amount. She'd given him a cheque for the purchase price, which Birkett had cashed. Birkett, meanwhile, planned to deliver Johnson shares that he himself already owned in the company—shares that he'd bought at a lower price—and to keep the whole amount Johnson had given him. However, he never actually did this. Suspecting that something was wrong, Johnson hired a lawyer who demanded that Birkett give Johnson her money back. Ultimately the case went to court, and Johnson was awarded the full amount. Birkett also had to pay her court costs and the interest on her money.

- a. Explain the two agencies that Johnson created as described in this case.
- b. On what basis would the court have decided for the plaintiff in this case?
- c. Explain why a broker shouldn't be allowed to sell his own shares in a company to a client.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

What about liabilities to third parties—that is, to people outside the principal/agent relationship? To answer this question, a distinction has to be made between liabilities resulting from contracts and liabilities for such things as tort and fraud (these terms will be explained soon).

As far as contracts go, the basic rule is that if an agent makes a contract with a third party on behalf of his or her principal, and if the agent is acting within the authority granted him or her by the principal, the principal is responsible for the contract. That means that if the principal doesn't live up to the contract's terms, the party with whom the contract was made can sue the principal in court.

A problem sometimes arises here when agents act outside the authority given them without the third party knowing it. Suppose, for instance, that an agent for a printing company has been given authority to buy paper up to a limit of \$10 000. The agent finds a really good deal and buys \$15 000-worth of paper, thinking the principal will readily ratify the deal. The principal, however, decides not to; meanwhile the company supplying the paper thinks it has a deal. Can the principal back out of the agreement, leaving the paper supplier holding the bag?

The rule is that even if agents exceed their authority, if, at the time of the deal, it seemed apparent to the third party involved that the agent had the authority to make the deal, the principal will be legally bound by it. In the scenario of the preceding paragraph, for instance, the principal would be legally obligated to buy the paper even though the agent went beyond his or her authority. On the other hand, if the third party knows—or has reason to suspect—that the agent is going beyond the authority granted by the principal, the principal won't be bound by the agreement.



Another situation can arise when a third party doesn't know he or she is dealing with an agent. The third party may think it's dealing directly with a principal. In this case, if this third party ever suffers harm because a contract isn't honoured, either the agent or the principal can be sued. The question that follows should help make this clear.

3. Casper owns Sylvester's Hotel, but Sylvester has managed it for years and makes all the contracts for purchases and services in the name of the hotel. He accounts privately to Casper, and everyone assumes that Sylvester actually owns the hotel. Eventually the hotel fails to honour its contracts and so leaves suppliers unpaid for their goods and services. It then comes out that Casper actually owns the establishment.
 - a. Is there a principal/agent relationship between Casper and Sylvester?
 - b. What legal recourse would the hotel's creditors have to get back the money the hotel owes them?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

fraud: intentional deception designed to achieve some gain

tort: a civil wrong other than breach of contract

Fraud is the intentional deception of one person by another to achieve some gain. A **tort** is an injury that one person causes another. A tort is a *civil wrong*, as opposed to a *criminal wrong*. In other words, if you commit a tort against another person, you won't be arrested by the police or, if convicted, thrown into jail. Rather, the person you wronged would have to take the initiative to start a legal action against you for some form of compensation—usually financial.

Some torts are intentional—like slandering a person's good name or trespassing on someone's property. Others are the result of negligence—like accidentally backing through your neighbour's fence or causing a broken hip because you failed to clear the ice off your sidewalk. In actual practice, most torts result from negligence.



If agents commit fraud or torts in carrying out their duties, their principals are liable to those injured by these acts. For example, if an agent hired to sell property makes a sale by lying about the quality or origin of the goods, the principal will be liable. If the injured third party (whoever bought the property) wants financial compensation, he or she could successfully sue the principal. By contrast, if the agent's fraudulent or tortious act went beyond his or her duties to the principal, the principal couldn't be held liable. For instance, if someone claimed to be your agent but really wasn't, you couldn't be held liable for any resulting contracts. In these cases, it's always up to the third party to make sure the person claiming to be an agent is telling the truth.

Some of this may have struck you as rather unfair. It may not seem quite right, for instance, to hold a principal liable for wrongs committed by someone acting as his or her agent. The question then becomes what, if anything, can a principal do in such cases to set things straight? Put in legal terminology, what *remedies* exist for a principal against an agent?

If agents simply aren't living up to the terms of their contracts or are engaged in any sort of misconduct, their principals can dismiss them without notice and without remuneration—that is, without paying them. If the principals have experienced financial losses because of their agents' breach of contract, they can sue the agents to get their money back. If agents have failed to hand over money or property received for their principals, the principals can commence legal actions against them to recover what's owed them. Finally, where agents have injured third parties through fraud or by committing torts and those third parties have sued the principals for compensation, the principals can then sue their agents.



Conversely, if principals don't pay their agents what they're owed, the agents can sue them for breach of contract to recover the amount owing. Agents also have what's called a right of **lien** against any money or property of their principals that the agents may have in their possession. This means that agents have a legal claim to this property until the debt is repaid.

lien: a legal claim upon another's property to satisfy a debt owed by that person

power of attorney: a document giving another person authority to act on your behalf

4. Ms. Beliveau, a wealthy woman, plans to sail around the world, but she needs someone to look after her financial dealings while she's away. She creates an agency by giving what's called a **power of attorney** to her brother. This power of attorney very carefully spells out that her brother can buy a certain piece of real estate for Ms. Beliveau if he can get it for a stipulated price. As it turns out, the brother learns that the property is worth far less than Ms. Beliveau had thought it was; as a result, he manages to buy it for considerably less money than his sister had been willing to pay and pockets the difference.

a. Will Ms. Beliveau be liable for the deal even when she learns that the land is relatively worthless?

b. What steps can she take to get compensation for her losses?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Master and Servant

In respect to liability, the employer/employee (master/servant) relationship is simpler than that of principal and agent. If employees commit torts against third parties while in the course of their duties, their employers are liable; in such situations the injured parties can sue the employers for damages.

damages: money awarded by a court to compensate someone claiming to have been wrongfully injured by another

legislation: a law or laws (statutes) that have been passed by a governing body

What about if an employee is injured on the job? Is the employer liable?

According to common-law principles, it was very hard for servants to sue their masters for injuries that occurred on the job. The courts assumed that employees voluntarily took on the risks inherent in their jobs. **Legislation** has improved the lot of employees' in this respect, however. You'll be examining the current situation later in the course.



Because employees cannot make contracts in the name of their employers, the issue of employers being liable for such agreements doesn't arise. Of course, as you've seen, sometimes an employee can act as an agent in some situations (such as the delivery person gassing up the company car on the employer's credit card). In such cases, the ordinary rules governing the principal/agent relationship apply.

5. An employee of a dry-cleaning establishment ruins an expensive dress when she fails to exercise proper care in the use of cleaning fluids. Explain where the liability for this situation rests.

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

Independent Contractors



What about independent contractors? Can people employing their services be held liable for wrongs they commit? The answer is very simple—no. By definition, contractors act independently, and their clients—those who employ their services—can't be held liable for any wrongs they commit. Contractors don't represent their clients legally, and they must take full responsibility for their actions in carrying out the terms of their contracts.

6. Sunnyvale Township employs the services of a contractor, Huey, to clean out and deepen a ditch within its boundaries according to plans submitted. Huey uses his own backhoe, but sub-contracts the removal of the excavated soil to a trucker, Louie. In the course of loading one of Louie's trucks, the backhoe operator, Dewey, an employee of Huey's, fails to control his machine and causes considerable damage to Louie's truck.

Based on what you've learned about liability, explain the legal responsibility of each of the following in regards to Louie's loss:

- a. the township
- b. Huey
- c. Dewey

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

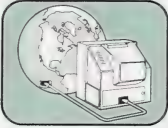
In this lesson you've had an overview of the rights, duties, and liabilities of people involved in different sorts of employment relationships. Now that you have a grounding in the different types of relationships that exist in the working world, you're ready to look into the employer/employee relationship in greater depth. That's what you'll be doing in the sections that follow. But before finishing up Section 1, take the little quiz that follows to see how well you've mastered some of the concepts discussed in this section.

- 7. a.** You've now encountered quite a few terms related to labour law. Test your knowledge of these terms by identifying the one referred to in each of the following. Be sure to go back and review any terms you weren't sure of.
- 1)** a legally binding agreement
 - 2)** the common-law term for an employer
 - 3)** a financial advantage that an agent receives over and above what he or she is entitled to
 - 4)** a person who employs another to act as an agent
 - 5)** a civil wrong other than a breach of contract
 - 6)** money awarded by a court to compensate for a wrong suffered at the hands of another party
 - 7)** legal responsibility for a wrongful action
 - 8)** a document giving another person the power to act on your behalf
 - 9)** a person who contracts to work for another party without direction from that party
 - 10)** a person who can make contracts on behalf of another
- b.** In this section you've also learned about different types of employment relationships. Indicate whether each of the parties referred to in the following illustrations is a(n)
- | | | |
|-----------|-------------|--------------------------|
| • master | • principal | • independent contractor |
| • servant | • agent | |
- 1)** Biliانا works as an insurance clerk for the ABC Assurance Co. Ltd.
 - 2)** Grace is a housekeeper for Alexander Smythe.
 - 3)** Gary sells farms for a real estate company.
 - 4)** Pavel has a contract to install fireplaces in new homes for Shane Homes Inc.
 - 5)** Jennifer is an investment broker for Richardson Securities Inc.
 - 6)** James owns the Unisex Hair Salon, which employs four beauticians.
 - 7)** Mr. Vo, a lawyer, negotiates a contract for Marie, a professional athlete.
 - 8)** Bart makes payments on a credit-card account for items charged by Roy.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Going Further

In this section you've begun your study of labour law. As you progress through the rest of the course, keep an eye out for news stories relating to labour law—stories about strikes, negotiations, unfair dismissal cases, cases involving discrimination against workers, and so on. If you can, keep a scrapbook of news stories taken from newspapers or newsmagazines. If you're following stories from television or radio news broadcasts, record the information in a notebook. Of course, you can also get your information from the Internet. Four sites you might try looking at are



- *The Edmonton Journal*
<http://www.canada.com/edmontonjournal/index.html>
- *The Calgary Herald*
<http://www.canada.com/calgaryherald/index.html>
- *The Globe and Mail*
<http://www.theglobeandmail.com/>
- *The Canadian Broadcasting Corporation*
<http://www.cbc.ca/>

Assignment

Now open Assignment Booklet A and answer the questions asked in the Section 1 Assignment.

Suggested Answers

1. No, this would mean that the agent was making a secret profit. The principal is required to pay only the amount the outfit actually cost.
2.
 - a. The first agency was the one created when Johnson hired Birkett. The second was the one created when she hired a lawyer.
 - b. The court likely felt that Birkett had acted wrongly by intending to sell Johnson his own shares without asking her permission.
 - c. In this case, the stockbroker would be caught in a conflict of interest. As Johnson's agent, Birkett's goal should be to buy shares for her at the lowest price he could get; but as the seller of his own shares, he'd want to sell them at the highest price he could get.
3.
 - a. Yes, Casper is the principal and Sylvester is the agent.

- b.** In this case, the creditors—people who have supplied the hotel with goods or services for which they haven't yet been paid—thought that Sylvester owned the hotel. For this reason, they now have a choice; they can sue either Sylvester or Casper, whichever one seems most likely to be able to give them the money they're owed. They can't sue both Casper and Sylvester, however; they have to make a choice.
- 4. a.** Yes, she'll be liable since the agency she created expressly gave her brother the authority to purchase the land on her behalf for the price she was willing to pay.
- b.** She can commence a legal action against her brother to recover the money he owes her—the amount he'd pocketed. In lying to his principal about the purchase price, the agent here committed fraud.
- 5.** The owner of the dry-cleaning business is liable, and the customer could commence legal proceedings against him or her for compensation. (Note, however, that the owner could also commence proceedings, in turn, against the employee if the employee had been negligent.)
- 6. a.** The township has no liability. It hired the services of an independent contractor, and has no legal responsibility for his actions.
- b.** As Dewey's employer, Huey is responsible for any torts Dewey commits. If Louie chooses to sue Huey for the cost of repairs to his truck, it's highly likely that he'll be successful.
- c.** Dewey's negligence caused the accident that damaged the truck. If Louie sues Huey for compensation, Huey can in turn sue Dewey. (Ordinarily an employer can't get compensation for damage caused by an employee in the normal course of carrying out his or her duties; but if the employee was negligent, the courts will award compensation.)
- 7. a.**
- | | |
|-------------------------|----------------------------------|
| 1) contract | 6) damages |
| 2) master | 7) liability |
| 3) secret profit | 8) power of attorney |
| 4) principal | 9) independent contractor |
| 5) tort | 10) agent |
- b.**
- | | |
|----------------------------------|---|
| 1) servant (employee) | 5) agent |
| 2) servant (employee) | 6) master (employer) |
| 3) agent | 7) agent (Marie is an independent contractor.) |
| 4) independent contractor | 8) principal |

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Section 1 Conclusion



This section of Legal Studies 2020 offered a grounding in some of the basics of labour law. In Lesson 1 you were introduced to different types of employment relationships; then in Lesson 2, you investigated the legal rights, obligations, and liabilities these different relationships entail, both for those doing the work and for those employing their services. Now that you have an understanding of this material, it's time to look more closely at the law governing relations between employers and employees in Alberta. That's what you'll be doing in Section 2.

SECTION 2

The Workplace and the Law



Imagine you're working in a part-time position to earn some extra money. How much overtime pay are you entitled to? Can you get holiday pay? Vacation pay? And just what are the laws regarding things like Workers' Compensation?

At the beginning of Section 1, you took a little employment quiz that asked questions like these; it was designed to get you thinking about issues you'll be looking into throughout this course. Questions of this sort will become important to you when you join the work force; perhaps they already are.

In this section you'll be looking at different types of employment contracts. When you've finished the section, you should be able to explain different kinds of contracts, to identify your basic legal rights and obligations as an employee, and to describe the fundamentals of workers' compensation and other federal and provincial legislation related to labour law. You should also be able to explain human rights in Alberta as they apply to the workplace.

Lesson 1: Employment Contracts



Principal/agent. Contractor/client. Master/servant.

In Section 1, you looked at these three types of employer/employee relationships along with their legal implications. Throughout your working life, you may well find yourself in each one of these relationships—and perhaps at different times you'll see both sides of each equation. And when this happens, it will be important to understand the legal implications involved in the situation.

The fact is, though, that as you prepare to enter the world of work as a young adult, you'll likely find yourself at first—and perhaps throughout your life—as an employee.

The material you'll be studying in this lesson, and for the remainder of this course, will focus principally on the employer/employee (or, as it's traditionally been called, the *master/servant*) relationship.

Not everyone works as an employee when they first start out. I'm planning to be an entrepreneur; no one's going to be giving me orders and making my life miserable.



Many people do intend to work for themselves; it's a goal worth striving for if it appeals to you. But working for someone else doesn't have to mean that your life will be miserable. There are many advantages to being an employee—and, as you'll see, there are laws in place to protect you from unscrupulous bosses.



Can you remember the first time you ever earned money outside the home? Perhaps you agreed to shovel the neighbour's walk or to mow the lawn for a few dollars. Or perhaps you earned your first money by babysitting or doing farm work.

However you did it, you likely entered into an agreement whereby you agreed to do the job and the other party agreed to pay you so much money in return. Such an agreement, as you know, is called a *contract* when it's legally enforceable.



The Elements of a Contract

If you've taken Legal Studies 1010, you'll likely recall that to be a legal contract, an agreement normally has to have five elements:

offer: a proposal to enter into a contract

acceptance: the assent to a definite offer

consideration: something of value exchanged by the parties to a contract

capacity: the legal ability to enter into a valid contract

- a genuine offer and acceptance
- consideration
- legal capacity
- genuine consent
- legal purpose

The discussion that follows will look at each of these elements in turn.

Offer and Acceptance

If a contract is to be legal, one party to it must have made a genuine offer and the other party must have accepted that offer precisely as it stands. For example, if your next-door neighbour, fed up with shovelling snow, throws his shovel down one day in disgust and shouts out, "I can't stand this anymore! My back hurts, my arms hurt, my shoulders hurt! I'd give a thousand dollars right now if somebody shovelled my walk for me!" that's not a genuine offer. If you eagerly responded "I accept! I'll shovel your walk right now for a thousand dollars," no enforceable contract would have been created.

On the other hand, if your neighbour were to approach you and seriously offer you \$10.00 to shovel his walk on Saturday, that is a valid offer that you're free to accept or reject. If you accept, a contract has been made.



Consideration

Normally the courts won't enforce an agreement in which only one side derives a benefit; there must be what the law calls *consideration* on both sides. The courts won't, for instance, enforce a promise or an agreement to give one party a gift. So if you agree to mow your neighbour's lawn for free and then change your mind and don't mow it, you haven't broken a legal contract. If, on the other hand, you have a part-time job at a fast-food restaurant, there's consideration on both sides. On your side, the consideration is the time and service you agree to supply. On your employer's side, there are your wages.

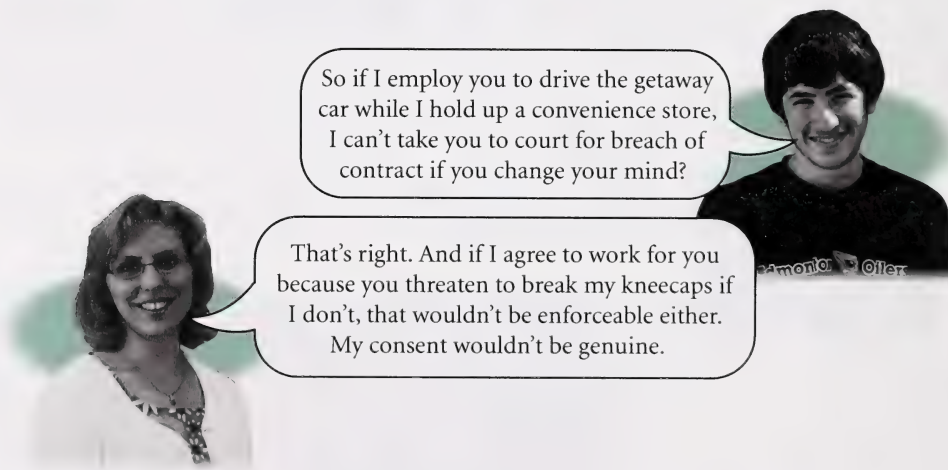
Legal Capacity

age of majority:
the age at which
a person can
undertake legal
obligations (in
Alberta, 18)

According to the law, some people lack the legal capacity to make binding contracts. People who are intoxicated (if the other party was aware of the intoxication), is one such group; people with severe mental disabilities or who are under the **age of majority** are two more. There are exceptions to these rules, however. For instance, if a contract entered into by a young person or an intoxicated person provides him or her with a basic necessity of life—like food—the contract will be enforceable by the courts.

Genuine Consent and Legal Purpose

Finally, to be legally enforceable, a contract must be for a legal purpose, and both parties must have consented to it freely. There can't be any intimidation, for instance, or misrepresentation (lying); and the contract can't be to do something against the law—like holding up a bank.



1. Arlene, age 34, offers to pay Ben, age 28, \$5000 to murder her husband. Ben, who has a drinking problem, accepts the offer, in large part because he's intoxicated when the offer is made. When he sobers up, Ben changes his mind, but Arlene says that a contract is a contract and Ben can't back out now.
 - a. Make a chart like the one that follows. For each element of a legal contract, write *yes* or *no* in the middle column to indicate whether that element is present in the described scenario; then, in the right-hand column, write a brief explanation for your answer.

Element	Yes or No	Explanation
Offer and Acceptance		
Consideration		
Legal Capacity		
Genuine Consent		
Legal Purpose		

- b.** Is this a contract for employment that the courts would enforce? Why or why not?

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

The Employment Contract

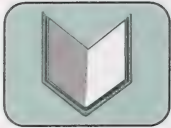
When you think of contracts, do you think of formal documents full of legal terminology? Chances are you do, but the truth is that not all contracts are written out; some, in fact, as you saw in Section 1, are only implied by the behaviour of the parties involved. If you get on a bus, for instance, and give the driver your fare, you and the driver have made a contract without exchanging a word. The driver has agreed to let you ride on the bus until you choose to get off, and, in return, you've paid an amount of money.

Not many employment contracts are implied, but they aren't all written out in document form either. Many are simply verbal agreements, and these verbal agreements are normally every bit as legally binding as a written document.

- Even though the courts will enforce verbal contracts, it's usually wise to get something in writing. Suggest a reason why this is true.



Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



To learn more about employment contracts, turn to page 570 of your textbook and read the introductory material to section "19.2: The Employment Relationship," up to, but not including, the heading "Common Law, Statute Law, and Employment Contracts" on the next page. Then answer the following questions.

3. Eve contracted to work as a beautician for two years with the Big Hair Beauty Salon. She and the salon's owner agreed to this arrangement verbally and shook hands on the deal. Will this contract be enforceable in the courts? Explain your answer.
4. One type of employment contract involves an employee and an employer coming to an individual agreement on such things as wages, hours, and working conditions. What kind of employment contract contrasts with this sort of situation?
5. Mark Hauser is a 17-year-old student at James Bridge High School in Daytown, Alberta. He has enrolled in work experience and has been placed with Maxson Engineering Corporation as a computer assistant. The document that follows is part of Mark's work experience contract. Read the contract and answer the questions that come after it.

WORK EXPERIENCE AGREEMENT

- A. Student's Name: Mark Hauser Phone: 555-9540
B. Employer's Name: Maxson Engineering Corporation Phone: 555-9469

1. PERIOD OF AGREEMENT

The agreement shall be in force from February 2, 20 to June 25, 20.

2. PARTIES TO THE AGREEMENT:

The parties shall be

- a. The student named in "A" above
- b. The employer named in "B" above
- c. The Daytown Board of Education
- d. The student's parent or guardian

3. REMUNERATION:

The student shall be paid \$5.00 per hour.

4. EMPLOYER'S RESPONSIBILITIES:

When the student begins work, provide an orientation at your workplace. Outline daily routines, dress code, safety procedures, and methods of dealing with the public.

5. STUDENT'S RESPONSIBILITIES:

Follow instructions carefully, and ask questions if you are not sure of something. Safety procedures are to be followed at all times.

Employer Signature T. Mahood

Student Signature Mark Hauser

Daytown Board of Education
Representative Signature L. J. Jackie

Parent/Guardian Signature Emily Hauser

- a. Identify the consideration in this agreement given by
- 1) the student
 - 2) the employer
- b. The remuneration (pay) agreed to in this contract is less than the minimum wage in Alberta. Suggest a reason why this is so.
- c. Even though Mark Hauser isn't an adult, this agreement will still be legally binding. Suggest a reason why this is so.
- d. Suggest a reason why a parent or guardian must be a party to an agreement of this sort.
- e. Why is it important that an agreement of this nature be in writing?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Written employment contracts certainly vary in design, but many contain the following provisions:

- *A probationary—or trial—period.* This early stage of employment lets both the employer and the employee assess the situation and decide how it's likely to work out. Normally the contract will state the length of the probationary period and what the employer can do when it's over.



You mean like let
the worker go or
give him or her a
full-time position?

Exactly!



- *The term of the contract.* This can be a specified period—a length of time or until the end of a project—or an indefinite period.
- *The job description.* This is an explanation of the nature of the work and what the employee's duties will be. The job description offers both the employer and the employee protection.

If an employee can't do the work, an employer can justify letting that person go by pointing to specific tasks in the job description that he or she has failed to do. On the other hand, if an employer at some point asks an employee to do things never agreed upon, the employee can point out that these tasks simply aren't in the job description in his or her contract.

- *Salary and benefits.* The employee's salary should be spelled out along with any benefits (such as a dental or eye-care plan) agreed to. Benefits like these will be discussed shortly.
- *Confidential information.* These days, many employers are having their workers promise in writing not to make use of any confidential information they may have access to in their job. Employees often have to promise, as well, to return copies of confidential information to their employers when they leave their jobs.
- *Non-Competition.* Often employers are afraid that their employees will learn the business their boss is in, get to know the customers, then quit and set up a competing business across the street. For this reason, employees are often asked to agree in their employment contract not to do this—at least not for a stipulated length of time and not too close to the employer's place of business.

non-competition clause: a clause in an employment contract that restricts an employee's ability to compete with his or her former employer for a stipulated period after leaving the job

A clause of this sort is called a **non-competition clause**, and the courts may or may not enforce it; it depends on how reasonable they think it is. The courts don't like to enforce anything that restricts a person's ability to earn a living.

- *Termination.* Most contracts stipulate how either party is permitted to end the arrangement. As you'll see in the next lesson, there are laws set out that all employers and employees have to obey in this respect, but individuals can agree to different arrangements as long as they meet the minimum requirements.

For instance, if the law says an employer must give an employee one week's notice of dismissal, an individual employer and employee can agree that two week's notice will be given. They can't, however, agree on less than a week.

6. François has opened the only bakery in a small town. He wants to hire Faith; she seems very capable, and in past jobs she's proven herself hardworking and great with customers. The problem is that François is suspicious that Faith's plans are to learn the business from him and then set up a competing bakery of her own. What can François do to minimize this possibility?



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

fringe benefit: an employment benefit granted an employee over and above regular wages

Before finishing this look at employment contracts, it's important to note that workers, or the unions that bargain for them, can negotiate **fringe benefits** in their contracts—benefits over and above workers' wages. Examples of fringe benefits are things like dental insurance, life insurance, and a pension plan. When fringe benefits are negotiated, deductions are usually made from workers' paycheques to cover the costs; frequently the employer shares these costs by matching, or even exceeding, the workers' contributions.

There are many different plans available for benefits of these sorts. Sometimes an employing company will make a very substantial contribution to a dental or vision plan, with the employees having to contribute a very small amount—or perhaps nothing at all—each month. On the other hand, in some cases the employees make the bulk of the contributions. Usually such plans allow an employee to either “opt in” or “opt out.”

If you’re negotiating an employment contract, the various fringe benefits may or may not appeal to you. For instance, if you’re single and have no dependants, paying for life insurance or a dental plan might seem like a waste of money; on the other hand, an employee with a family would probably be grateful for insurance.

For this reason, before making a decision about any fringe benefits you’re offered, discuss them—and their cost—with someone else who can give you advice.

Employment contracts are, as you’ve seen, sometimes written, sometimes verbal. About 70 percent of employment contracts are individual agreements, while the remaining 30 percent are collective agreements between an employer and a union that represents a group of workers. You’ll be examining unions and collective agreements in the next section.

As you’ll recall from Section 1, workers have the right, whether they’re bargaining individually or collectively, to negotiate contracts that go beyond the minimum standards set down in the law. Still, those minimum standards, created by legislation passed by the provincial, territorial, and federal governments, play an important role in seeing that employees are guaranteed certain basic rights.

In the next lesson you’ll look more closely at some of the rights guaranteed Albertans by provincial statute law.

Going Further

Throughout the remainder of this course, you’ll be referred from time to time to Internet sites for further information on various topics. These activities are optional, but if you want to learn as much as you can about labour law, the Internet can be a wonderful help. At this point, you haven’t been dealing with specific legislation, so the Internet isn’t as useful yet as it will become; but here are a couple of sites you can visit right now to start getting a feel for the sort of information out there. Just click on the topics that interest you.

- <http://www.law-faqs.org/ab/lab-con.htm>
- <http://www.law-faqs.org/nat/cont.htm>

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 1.



Suggested Answers

1. a.

Element	Yes or No	Explanation
Offer and Acceptance	Yes	Arlene has made a precise offer and Ben has accepted it.
Consideration	Yes	Arlene is offering \$5000, and, in return, Ben is offering his services in murdering her husband. Something (presumably of value) is exchanged on each side.
Legal Capacity	No	Both parties are over the age of majority. The problem is Ben's intoxication. If Arlene knew he was intoxicated and was taking advantage of this fact, Ben can void the contract when sober if he acts quickly.
Genuine Consent	Yes	There were no threats, no fraud, or misrepresentation as far as we know.
Legal Purpose	No	Since murder is a crime according to the <i>Criminal Code</i> , this contract lacks legal purpose.

- b. No, the courts wouldn't enforce this contract. One possible problem is Ben's state of intoxication, but the main problem is the highly illegal purpose of the agreement.
2. If there is a disagreement as to the terms of the agreement, having them spelled out in a written document will save a great deal of trouble. Also, even though the courts will enforce a verbal contract, it can be hard to prove that such an agreement ever existed if one party simply denies it. A written document solves this problem.
3. No, this contract wouldn't be enforceable. The *Statute of Frauds* requires that if employment is intended to last for over a year, a written contract is necessary. The *Statute of Frauds* was a law passed by the English Parliament in 1677 in response to the problems the courts were having in enforcing old contracts and verbal agreements. It stipulated that certain sorts of contracts be in writing, and one of those sorts was any agreement lasting more than a year. All the provinces and territories of Canada have adopted, with a few changes in some cases, the principles of the *Statute of Frauds*.
4. The other type of employment contract involves collective bargaining—the negotiation of a contract between an employer and a union. In such situations, a worker's union negotiates what's called a *collective agreement* for those workers who belong to it. You'll be looking into unions and collective bargaining in Section 3.
5. a. 1) The consideration Mark will supply is the work he'll do as a computer assistant.
- 2) The consideration the employer will supply is Mark's \$5.00-an-hour remuneration. Though it's not stated in the contract, Mark will also receive training, experience, and (not to be forgotten) school credits.
- b. The remuneration is less than the minimum wage because a work-experience situation isn't something a student does principally for money. What Mark gains is credits from his school and some experience in the real world of work.

- c. Mark is receiving a beneficial service from his employer. Also, his parent or guardian, who is over the age of majority, is a party to the contract.
 - d. The chief reason is that the student is underage. Also, a work-experience situation is technically considered a field trip, and school boards routinely require the signature of a parent or guardian in such situations.
 - e. It's important to make sure all the parties are aware of the specific conditions involved in the employment arrangement. Anyone entering into a contractual situation should understand precisely what's involved, and a written agreement is a good way of ensuring this. It is also important in work-experience situations that the liability of the various parties be spelled out in a written agreement. This can be important, for instance, if there's an injury on the job.
6. François can include a non-competition clause in Faith's employment contract. But if he wants it to stand up in court, he'll have to make sure it's reasonable. He should stipulate a relatively short period of time after leaving his bakery in which Faith can't set up her own shop. He should also keep the geographic area reasonably small.

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Lesson 2: The *Employment Standards Code*



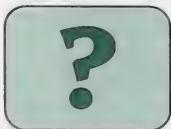
So far in this course you've looked at different types of employment relationships and employment contracts. You've also learned something about the traditional common-law rights and duties of employers and employees. The fact is, though, that in our complex modern society, most of the legal aspects of day-to-day life in the workplace are governed not by the common law but by legislation.

In this lesson you'll be getting into some of the nuts-and-bolts rules and regulations of labour law as they exist in Alberta today.

Employment Standards: An Overview

In Canada, both the federal and the provincial governments have passed statutes regulating labour law, but since most such legislation has been passed by the provincial (and territorial) governments, that's where the focus will be here.


Most of the work you'll be doing in this lesson has to do specifically with the laws that exist in Alberta, but to get a feel for the sorts of issues dealt with by provincial labour-law statutes across the country, open your textbook to page 580 and read from the heading "Provincial and Territorial Employment Legislation" as far as, but not including, the subheading "Termination and Dismissal" on page 583. Then answer the questions that follow.



1. The chart on page 581 presents the provincial and territorial minimum wages in early 2002. At that time, where did Alberta rank on the list?
2. Recently the minimum wage in Alberta was increased to \$7.00 an hour, though more people believe that, given the wealth of Alberta, the province should have an even higher minimum wage. The argument is that people working on the bottom end of the wage scale should have the opportunity to make an income they might actually be able to live on. Where is the incentive to work at all, the argument goes, if the reward is so small?

Meanwhile, the argument in favour of a low minimum wage is that it allows more employers to hire more people, thereby increasing employment. It's also argued that those who work for minimum wage aren't usually people who are supporting themselves or families anyway; they're most likely students and others with part-time jobs trying to earn a bit of extra pocket money.

What are your views on this issue? Present them in a brief position paper of no more than a page. If you have a study partner, take sides and debate the issue.

- 
3. Looking at the same chart, note that some provinces and territories have special minimum wages for students, youths, and inexperienced employees.
 - a. Suggest a reason for this.
 - b. Do you think this is a good idea? Try to present **one** argument in support of each side of this issue or, if you can, debate it with a study partner.
 4. What are statutory holidays? Present some examples in your answer.
 5. List **three** or **four** rights, other than a minimum wage and statutory holidays, that the various provincial statutes have granted workers in Canada.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

The Situation in Alberta

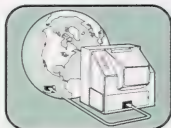
Now that you've had an introduction to the basic kinds of protection offered workers across the country by provincial and territorial legislation, it's time to look more closely at the law as it exists in Alberta. The Alberta statute that applies in general to everyone in the employer/employee relationship (with a few exceptions you'll read about shortly) is the *Employment Standards Code*, which is administered by the Employment Standards Branch of Alberta Human Resources and Employment.



There are many other provincial and territorial statutes in the area of labour law. Some of them, like the *Teaching Profession Act* or the *Medical Profession Act*, govern specific occupations, while others are more generic. It's the *Employment Standards Code*, however, that sets out minimum standards for most employees in the province.

What follows is a look at some of the main provisions in Alberta's *Employment Standards Code*. At the back of this Student Module Booklet, you'll find a summary of the chief provisions of the *Code* published by Alberta Human Resources and Employment. The discussion that follows is set up in a question/answer format that should help you work your way through the material.

Going Further



- You can quickly access a great deal of information about Alberta's *Employment Standards Code* and accompanying regulations on the Internet. The website address that follows, part of The Alberta Human Resources and Employment website, is an excellent place to start.

<http://www3.gov.ab.ca/hre/employmentstandards/publications/index.asp>

Among other documents, you'll find almost 30 fact sheets giving you more detailed information on workers' rights in Alberta. You'll also find addresses and phone numbers that you can contact for more information.

- Another good online source of information on employee/employer law in Alberta is a site operated by Student Legal Services of Edmonton. Just go to the following address and, on the right-hand side, click on "Employment—You and the Law." You'll find a good deal of very easy-to-understand material that should answer most of your questions.

<http://www.slsedmonton.com/civil/index.html>

- Finally, here's another address providing easily accessible information. It may already be familiar to you from Lesson 1.

<http://www.law-faqs.org/ab.htm>

Once there, go to the "Labour Law" bullet and click on the topics that interest you.

As you work through the material that follows, remember that these sites can supply you with extra information on any of the topics discussed.



Who Is Covered by the Code?



The *Employment Standards Code* covers

- full-time workers
- salaried workers
- part-time workers
- casual workers
- temporary workers
- students with jobs

Some workers, however, aren't covered by the *Code*. This group includes

- farm workers
- domestic workers (for example, maids, household servants, and valets)
- employees falling under federal—as opposed to provincial—jurisdiction (for example, employees of the federal government or inter-provincial transportation companies)
- police, firefighters, provincial employees
- self-employed people

What Hours of Work Does the Code Stipulate?

With some exceptions, employees in Alberta can work no more than 12 consecutive hours in a day (unless there's been an accident or emergency situation or if some urgent work needs to be done).

What Rest Periods Are Required?

If a shift lasts more than five hours, employees must have a half-hour break, paid or unpaid (unless, again, there's been an accident or emergency situation or if there's urgent work to be done).

What Days Off Are Required?

Employees must be allowed one day off per week. These days may be accumulated for up to four weeks and then taken in a block. There are no rules requiring employers to give their employees sick days or bereavement leave.

bereavement: the death of a family member

How Must Overtime Pay Be Calculated?

All work an employee does in excess of eight hours a day or 44 hours a week (whichever is greater) is considered overtime, and the employee must be paid accordingly.

6. Giuseppe works for Danscombe Manufacturing Ltd. Over the last four weeks he's accumulated hours as follows

	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
Week One	-	8	8	8	8	8	8
Week Two	-	8	8	10	10	8	-
Week Three	-	8	8	10	10	8	10
Week Four	4	-	4	4	10	8	8

Now make a chart like the one that follows and complete it by filling in Giuseppe's total, regular-time, and overtime hours for each week.

	Total Hours	Regular Hours	Overtime Hours
Week One			
Week Two			
Week Three			
Week Four			

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

How Much Is Overtime Pay?

If an employee is paid in cash, he or she must receive at least time-and-a-half (1.5 times the regular wage rate) for overtime hours worked. Workers and their bosses can, however, arrive at a written agreement whereby the workers are given time off in place of overtime wages.

7. Giuseppe, from question 6, earns minimum wage—\$7.00 an hour. Use Giuseppe's Week Three hours-at-work to complete the following chart.



Week Three Earnings		
Regular Pay	Overtime Pay	Total Pay

Turn to the Suggested Answers at the end of this lesson and compare your chart with the one given there.

What Deductions Are Made from an Employee's Paycheque?

Some deductions are optional. An employee might, for instance, ask that certain amounts be taken off his or her paycheque and used to purchase Canada Savings Bonds or life insurance. For such deductions, written consent is required from the employee. Other deductions, however, are mandatory. These **statutory** deductions are

statutory:
required by
statute—that is,
by law

- income tax
- employment insurance premiums
- Canada Pension Plan premiums
- Alberta Health premiums
- **garnishment** payments, if there are any

garnishment: a
process whereby
a court dictates
that a portion of a
worker's wages be
deducted to pay a
court settlement



That last one might be confusing. The others in the list affect all employees, but the last one applies only to employees who have lost a court case and have to pay money to the successful plaintiff. In such cases, where the person can't pay all at once, the court may require the employer to deduct a portion of his or her wages each pay period to be given to the person whom the money is owed—until the debt is paid in full.

Note that no deductions can be made from an employee's paycheque to make up for cash shortages (unless that employee alone had access to the money) or faulty workmanship.

This means that if an employer suspects that you've been stealing from the till but has no proof, he or she can't start to deduct money from your wages. Nor can an employer who doesn't like the way you work pay you less than your established wage rate.

If an employer hasn't been keeping up his or her wage payments, an employee must claim them within 12 months. Up to a total of six months' wages can be claimed.

What Is the Minimum Wage?

As you've already seen, the minimum wage for a person over the age of 18 years in Alberta is currently \$7.00 an hour (but remember, this does change every few years).



8. Sondra is a grade 12 student at James Bridge High School. Last July she worked as a receptionist at Westmann Photography and received the minimum wage. During her third week, she accumulated the following hours:

Monday	5	Thursday	10
Tuesday	10	Friday	10
Wednesday	8	Saturday	8

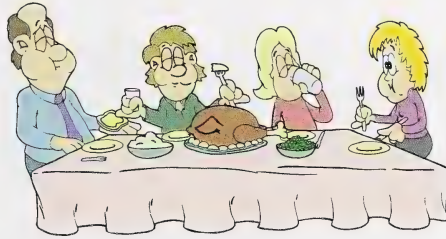
- What were Sondra's total hours worked?
- What were her overtime hours worked?
- What were her regular hours worked?
- How much was her gross (before deductions) paycheque for this week?
- What deductions would her employer be required to make from her paycheque?
- Sondra wasn't feeling well on Wednesday. Could she have claimed sick time if she'd stayed home? Explain your answer.
- Is Sondra entitled to any rest periods during the week? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

What Are Employees' Holiday Entitlements?

Certain days are designated *general holidays* in Alberta. They're listed below; all but the last item in the list are what your textbook called *statutory holidays*.

- New Year's Day
- Alberta Family Day
- Good Friday
- Victoria Day
- Canada Day
- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day
- any other day designated a general holiday by the employer



Most employees are entitled to these days as paid holidays (more about this shortly). Christmas Eve, Boxing Day, New Year's Eve, Easter Monday, and civic holidays aren't considered general holidays. Workers may be given these days off, but employers aren't required to grant them.

Which Employees Are Entitled to Paid Days Off on General Holidays?

To qualify for entitlement to a general holiday, an employee must have worked 30 days, full-time or part-time, in the year prior to the holiday. As well, the holiday must fall on a day that would otherwise be a normal workday for the employee. The employee must, however, be willing to work on the holiday for general holiday pay—a higher-than-normal rate of pay.

What If an Employee Is Required to Work on a General Holiday?

Sometimes an employee entitled to a general holiday will be required to work on that day. For example, the owner of a convenience store open every day of the year has to have people working on holidays. If an employee entitled to general holidays is required to work on one, he or she is entitled to *general holiday pay*. General holiday pay consists of the worker's regular wages plus time-and-a-half for all hours worked.

9. Stamata, a grade 12 student at James Bridge High School, works at minimum wage as a camera-operator assistant at Bowcroft Photography Ltd. She works three hours each Wednesday, Thursday, and Friday evening and all day (eight hours) on Saturday. Her employer has closed the store on Christmas Day, which is a Thursday; however, Stamata works for eight hours on Christmas Eve.
 - a. How much gross pay will Stamata receive for Christmas Eve?
 - b. How much gross pay will she receive for not working Christmas Day?
 - c. If the store had remained open on Christmas Day, and Stamata had been asked to work, what would her gross pay have been if she'd refused?
 - d. If Christmas Day were on a Monday, how much gross pay would Stamata receive for not working on that day?

10. Lane is also a 17-year-old student at James Bridge High School. He works for minimum wage as a sales assistant for the Pequod Drug Mart on Friday evenings (four hours), Saturdays (eight hours), and Sundays (eight hours). Lane's employer keeps her store open for business on Good Friday, the following Saturday, Easter Day, and Easter Monday.

- a. What would Lane's gross pay be for the four days he works on the Easter weekend?
- b. If Lane refused to work on Good Friday for religious reasons, what would his gross pay be for the remaining three days?



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

What Are Employees' Vacation Entitlements?

Another topic covered in the *Employment Standards Code* is that of vacation entitlements.

An employee who has worked for a full year is entitled to at least two weeks' vacation with pay. An employee who has worked for five years is entitled to at least three weeks' vacation with pay.

If the employment is terminated before the employee completes a year's work, 4 percent of his or her wages must be paid to the employee to compensate for lost vacation time. Part-time employees qualify for vacation and vacation pay.

How Much Written Notice Must Be Given Before Leaving a Job?

The chart that follows shows the written notice required by employees wishing to terminate their employment.

Length of Service	Written Notice Required
up to three months	none
over three months	one week
over two years	two weeks

How Much Written Notice Is Required for an Employer to Terminate a Job ?

The chart that follows shows the written notice required if an employer wishes to let a worker go.

Length of Service	Written Notice Required
up to three months	none
over three months	one week
over two years	two weeks
over four years	four weeks
over six years	five weeks
over eight years	six weeks
over ten years	eight weeks

All employees governed by the *Employment Standards Code* must be given written notice except the following:

- employees who quit
- employees who have worked less than three months
- construction workers
- seasonal employees
- employees on strike
- employees who have been terminated for *just cause* (this will be explained shortly)

- 11.** Suggest a reason why construction and seasonal workers don't have to be given formal written notice of termination.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



What Is Termination for Just Cause?



just cause:
*the legal right
to dismiss an
employee or take
some other action*

Sometimes an employee's behaviour gives an employer what's called **just cause** to dismiss him or her without proper notice. For example, if employees are found to be stealing from their employers or are always insolent and unwilling to carry out orders, their employers may be able to dismiss them immediately. Normally the courts regard the following as grounds to terminate employment for *just cause*:

- dishonesty (for example, stealing, forging the signature of the employer, cheating on expense claims)
- disobedience (for example, refusing to show up for work on time, to work overtime, or to co-operate in scheduling holidays)
- conflict of interest (for example, secretly setting up a business in competition with the employer)
- willful neglect of duty (for example, showing a generally negative attitude or refusing to perform at the required level of work even though the employee is capable of it and has received warnings)
- prejudicial conduct (for example, criticizing the employer, engaging in off-duty criminal activities, insubordination, drunkenness on the job, gross carelessness, or sexual harassment)

If an employer does dismiss an employee for just cause, the employer must pay the worker any wages owing, including overtime wages, along with any general holiday pay and vacation pay due the employee.

wrongful dismissal:
*the dismissal of an
employee without
proper notice or just
cause*

Wrongful dismissal is the legal term used when an employee is let go by his or her employer without receiving proper notice or without just cause. An employee who thinks he or she has been a victim of wrongful dismissal can take the employer to court.

And the court, I suppose, has to decide if the employer followed the *Employment Standards Code* or if there really were grounds for dismissal with just cause.

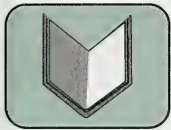


Yes, but remember, the *Employment Standards Code* just sets out the minimum standards. Sometimes a court will decide that even though enough notice was given according to the *Code*, this isn't a reasonable notice in a particular situation. For instance, if an employee has worked for an employer for many years or has a position of great responsibility, the court may feel that more notice than that stipulated in the *Code* was required. Then the employer will have to pay the employee enough money to compensate him or her.



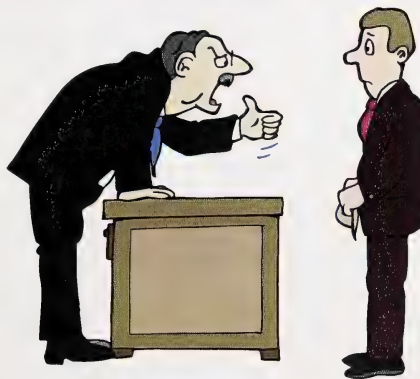
To learn more about termination of employment, open your textbook to page 583, and read the material under the subheading "Termination and Dismissal" up to the case study on page 584. When you've finished, answer the following questions.

12. a. In recent times many employers have taken to paying workers in place of giving them notice. Why is this?
- b. What is *severance pay*?
- c. Explain **constructive dismissal** in your own words, and give an example.
- d. What rights does an employee have if he or she has been a victim of constructive dismissal?



constructive dismissal: the act of deliberately forcing an employee to resign through various forms of mistreatment

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



Are Workers Entitled to Maternity and Parental Leave?

According to the *Employment Standards Code*, any employee who has been continuously employed with the same employer for at least 12 months is entitled to maternity and/or parental leave. This includes part-time and student employees.

- Birth mothers can take up to 52 weeks of unpaid leave. This leave consists of 15 weeks maternity leave and 37 weeks parental leave.
- Fathers and parents adopting children qualify for 37 weeks of parental leave. A father and mother can share the parental leave, or either parent can take it all.
- Employees taking maternity and/or parental leave must
 - give employers six weeks' written notice
 - give four weeks' written notice of their intention to return to work

The job of a parent on parental or maternity leave is guaranteed while the person is away; in other words, when the employee returns, he or she must be given the same job or a comparable one that pays at least as much as the old one.

An employee on maternity or parental leave cannot be dismissed. And a woman with less than the required 52 weeks employment who becomes pregnant can't be arbitrarily laid off or fired because of the pregnancy. Employees on maternity or parental leave are entitled to benefits (payments) under the Employment Insurance Plan.



I've heard that some employers hesitate to hire younger women because of the risk that they'll get pregnant and take maternity leave. I can see their point; I mean, you spend all this time training someone on the job and then she goes off work on maternity leave, and you have to train a replacement. That would cost money.

Interesting point—remember, though, that fathers, too, can get the 37 weeks of paternal leave; mothers qualify for only an extra 15 weeks maternity leave. But it's true that the rights of an employer to hire whomever he or she wants can conflict with people's rights to have children; and it's women who bear and—most often—care for children. But our society needs kids; and women need jobs. That's why there's legislation to protect women and other groups from discrimination in hiring. You'll be looking at this in a later lesson.



13. Gunda is pregnant with her third child. She intends to take maternity and parental leave.
- How many paid weeks off work is Gunda entitled to under Alberta law?
 - What is Gunda required to do before she can take her leave?
 - What must she do before returning to work?
 - Gunda's husband also wants to take time off work when the child is born. Is he entitled to do this?
 - Gunda takes her leave, but when she returns to work, she's given a job requiring far less responsibility than her old one and that pays a lot less. Have Gunda's rights been infringed upon?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

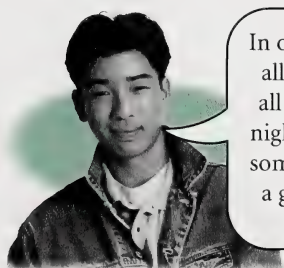
What Hours Can Young People Legally Work?

The *Employment Standards Code* divides people who have not yet reached the age of majority into two groups:

- *Adolescents* are people between the ages of 12 and 14 inclusive.
- *Young persons* are people between the ages of 15 and 17 inclusive.

The limitations on the employment of adolescents are quite strict. They can be hired to make certain sorts of deliveries and to work as sales clerks as long as there's no harm done to their health, education, or welfare. Sometimes other sorts of work will be allowed, but the adolescent's parent or guardian must always give written consent, no matter what the work is. What's more, adolescents can work only two hours on a school day and eight on a non-school day. They can't work between 9:00 in the evening and 6:00 in the morning.

Young persons are allowed much more flexibility, but there are still restrictions. They can't work between midnight and 6:00 in the morning selling food, beverages, or gasoline, or in a motel or hotel. They can work in places like these between 9:00 p.m. and midnight only if accompanied by an adult. Young persons can, however, work through the night in places like hospitals and manufacturing plants, but only with written permission from a parent or guardian and only if they're in the presence of one or more adults.

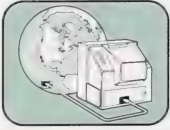


In other words, the law doesn't allow anyone under 18 to be all alone in the middle of the night at a convenience store or some other place where there's a good chance they could be assaulted in some way.



Exactly!

And that's your look at the main provisions of Alberta's *Employment Standards Code*. The *Code* is administered by the Employment Standards Branch of Alberta Human Resources and Employment. If you ever find yourself in a situation where you think your rights under the *Code* have been violated, the first thing to do is to try to work things out with your employer. To prepare, you can get more information from the Employment Standards website at



<http://www3.gov.ab.ca/hre/employmentstandards>

If talking things over doesn't work, you should contact the nearest Employment Standards office or consult a lawyer. You can get contact numbers for Employment Standards offices off the preceding website or call the toll-free province-wide information line. Dial 310-0000 and then dial (780) 427-3731. Remember, however, that working with your employer to find a solution is by far the best alternative if it's at all possible.

14. To finish up this lesson, test your knowledge of Alberta's *Employment Standards Code* and other aspects of employment laws and regulations by answering the following questions. Referring to the summary of the *Code* at the back of this Student Module Booklet and/or to the material in Lesson 2 if necessary, tell whether each of the following is **true** or **false**. Correct any false statements.

- a. Normally a worker on a shift lasting over five hours must get a half-hour paid rest.
- b. Workers can accumulate their days off for up to four months and then take them as a block.
- c. In a given day, overtime begins after eight hours of work.
- d. Overtime pay must be at least twice the worker's normal wage rate.
- e. After five years on the job, an employee must get at least three weeks' paid vacation.
- f. Boxing Day is a general holiday in Alberta.
- g. An employee required to work on a general holiday is to be paid time-and-a-half.
- h. An employee who has worked over two years for an employer is entitled to two weeks' written notice of dismissal.
- i. An employee can be dismissed without notice if he or she is stealing from the employer.
- j. New fathers are entitled to 18 weeks unpaid paternity leave.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

Earlier in this lesson, you were referred to the Internet as a source of extra information on Alberta labour law. If you'd like to use another method of research, you might consider using the Dial-A-Law service operated by Calgary Legal Guidance. This telephone service provides pre-recorded information on a wide variety of legal issues, and the information can be accessed toll-free anywhere in the province. To contact Dial-A-Law, do the following:

- If you live in Calgary, dial 234-9022. If you live elsewhere in the province, dial 1-800-332-1091 toll free.
- Follow the pre-recorded instructions you're given over the phone to access the information you want.

Two topics you might consider researching this way are

- 611: *Wrongful Dismissal*
- 612: *Non-Union Employee Rights*

One topic that came up in this lesson was the right of employers to hire whomever they want versus the right of women not to be discriminated against because they might have children. This topic leads directly into the broader issue of human rights in the workplace in general. That's the issue you'll be looking at in the next lesson.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer question 2.

Suggested Answers

1. In January 2002, nine of the country's provinces and territories had a higher minimum wage than Alberta. Alberta tied with New Brunswick for tenth spot, followed by Prince Edward Island and Newfoundland and Labrador. Note that since that time the minimum wage in Alberta has risen.
2. Answers will, of course, vary. In your experience, is it true that few people supporting themselves and their families work for minimum wage? Whatever your position, were you able to supply sound arguments?
3. a. Answers may vary, but the rationale is that lower wages for younger people encourage more employers to hire youths, thereby creating employment for them. And, since young people are generally working for pocket money rather than to support themselves, they can afford to work for less.

Again, answers will vary. Did you present your argument clearly? Could you defend it?

4. Statutory holidays are holidays for which full-time workers must be paid. Examples are New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, and Boxing Day.

5. Lists will vary. Compare yours with the one that follows:

- the right to overtime pay if the maximum number of hours worked is surpassed
- the right to be compensated for working on Sunday
- the right to paid vacations
- the right to unpaid maternity or parental leave
- the right to some form of pay equity

6.

	Total Hours	Regular Hours	Overtime Hours
Week One	48	44	4
Week Two	44	40	4
Week Three	54	44	10
Week Four	38	36	2

In case this question gave you problems, here's how to make the calculations. For each week, add up the number of hours worked each day in excess of eight. Then add up the number of hours worked for the whole week in excess of 44. Whichever number is greater is the number of overtime hours worked.

In Week One, for example, Giuseppe never worked more than 8 hours in a day, so according to this calculation he worked 0 overtime hours. However, his total hours worked is 48, which is 4 more than 44. Since 4 is greater than 0, this is the number of overtime hours for which Giuseppe must be paid. And since 4 of his 48 hours must be considered overtime, this leaves 44 regular hours.

In Week Two, he worked only 44 hours in total, so according to this calculation, he worked 0 overtime hours. However, twice he worked 10-hour days, which gives him 4 overtime hours according to the second method of calculation. Again, since 4 is greater than 0, this figure represents the number of overtime hours Giuseppe worked. Subtract 4 from 44, and this leaves 40 regular hours.

The last two calculations can be worked out the same way.

7.

Week Three Earnings

Regular Pay	Overtime Pay	Total Pay
\$308.00	\$105.00	\$413.00

8. a. Her total hours worked were 51.

b. Her overtime hours worked totalled 7 (51 minus 44).

c. Her regular hours totalled 44.

d. Sondra receives minimum wage—\$7.00 per hour. During her third week, she earned money as follows:

44 regular hours @ \$7.00: \$308.00
 7 overtime hours @ \$10.50: \$73.50

Gross pay: \$381.50

e. Her employer would be required to make deductions for

- income tax
- employment insurance
- Canada Pension Plan

f. Sondra's employer may well allow employees a certain number of paid sick days, but there's no legal requirement for this. The *Employment Standards Code* doesn't make time off for illness a right for Alberta employees.

g. On shifts lasting more than five hours, Sondra is entitled to one half-hour break. This means that on Monday she isn't entitled to a break, but on the remaining days she worked that week, Sondra can insist on one half-hour break after the first five hours of her shift.

9. a. Since Christmas Eve isn't a general holiday, Stamata will receive her normal rate of pay:
 8 hours @ \$7.00 = \$56.00.

b. Since Stamata normally works for three hours on Thursdays, she'll get those three hours off at her regular pay rate: 3 hours @ \$7.00 = \$21.00.

c. If Stamata had refused to work, she wouldn't have received any pay. (But if she had worked, she'd be credited with three hours at 2.5 times her wage rate. Here's the math:
 3 hours @ \$17.50 = \$52.50.)

d. Since Monday isn't a regular workday for Stamata, she wouldn't get paid for not working that day.

- 10. a.** Since only Good Friday is a general holiday, Lane will be paid his normal wage for his work on Saturday, Sunday, and Monday. Over these three days, he'll be paid a total of \$168.00 (24 hours @ \$7.00).

For Good Friday, Lane will be paid his normal wage for his four-hour shift plus time-and-a-half. His normal wage would total \$28.00 (4 hours @ \$7.00) and the time-and-a-half wage would be \$42.00 (4 hours @ \$10.50). Lane's earnings for Good Friday would, then, total \$70.00 (\$28.00 + \$42.00).

The grand total of Lane's earnings for the weekend would, then, be \$238.00 (\$168.00 + \$70.00).

- b.** Lane wouldn't be paid for Good Friday, but he has earned his regular pay for the remaining three days. This would be \$168.00.
- 11.** Construction workers are usually hired for the duration of a particular project, and the employer generally can't forecast exactly how long the project will last. It would be impossible to give workers two week's written notice each time their services were no longer required. Since seasonal jobs end automatically when the season ends, it isn't necessary to give workers formal notice in advance.
- 12. a.** This practice has evolved in order to protect the property of the businesses and to help maintain a positive working climate. Vengeful employees who are dismissed from their jobs sometimes get back at their employers by damaging or sabotaging company property and by being generally disruptive. Now that computers are so prevalent in the workplace, it's easier than ever for an angry worker to cause havoc by destroying data.

It's important to remember that a relatively tiny portion of dismissed employees are likely to behave in these ways, but employers know that it only takes one to cause a great deal of trouble.

- b.** *Severance pay* is money over and above normal wages that is paid to an employee upon dismissal. Laws or negotiated contracts can require an employer to pay an employee a specific amount upon dismissal based on the number of years worked.
- c.** *Constructive dismissal* occurs when employers try to force employees to quit by doing such things as demoting them, transferring them to undesirable locations, giving them more work than they can possibly do, or bypassing them for promotions. Employers might try in this way to get rid of an employee without having to give notice or pay in place of notice. Examples, will of course, vary.
- d.** Employees who can satisfy the courts that they've experienced constructive dismissal have the same legal rights as those victimized by wrongful dismissal. It can, however, be harder to prove in court that constructive dismissal has occurred than it usually is to establish wrongful dismissal. This is because constructive dismissal is frequently a subtle process. Is an employee really being given too much work deliberately, or is that employee just not up to the job?
- 13. a.** Trick question! Gunda isn't entitled to any paid time off. She is, however, entitled to 52 weeks of unpaid leave—15 weeks maternity leave and 37 weeks parental leave. Gunda can collect maternity/parental benefits through the federal Employment Insurance plan.
- b.** Gunda has to give her employer six weeks' written notice of the date she intends to begin taking her maternity.

- c. Gunda must give her employer four week's written notice of the date she intends to return to work.
 - d. Yes, the couple may divide Gunda's 37-week parental leave any way they choose if they wish to use the allotted time in this way. Only Gunda, however, can claim the 15-week maternity leave.
 - e. Yes, Gunda is entitled to the same job, or an equivalent one, with at least the same rate of pay.
14. a. False (The rest-break can be paid or unpaid.)
- b. False (Days can be accumulated for up to four weeks, not four months.)
 - c. True
 - d. False (The rate must be at least 1.5 times the worker's normal wage rate.)
 - e. True
 - f. False (The general holidays are New Year's Day, Alberta Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Remembrance Day, and Christmas Day.)
 - g. False (In this case, an employee is to be paid a regular day's wages as well as 1.5 times the regular rate.)
 - h. True
 - i. True
 - j. False (A new father is entitled to 37 weeks of parental leave, though he can divide these weeks with the mother if the couple chooses to do so.)

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Lesson 3: Women in the Workplace



Celine loves her job and is very good at it. She works hard, keeps up to date with changes in her profession, and gets good results; but she just can't seem to get promoted beyond a certain level. She sees male colleagues climb up through the ranks past her. They don't have to go home each night and prepare supper for their families and clean the house; instead, they often take work home and, so, get more accomplished than Celine can. They also often play golf with the boss on weekends; something Celine's never been invited to do. Celine feels trapped by what has been called the *glass ceiling*—the invisible barrier that, over the years, has frequently prevented women from getting into positions of real power in their professions.

Yeah, I've heard about that. Even in professions where there are lots of women—like teaching—the percentage of women in positions at the top is relatively small.



That may have been true in the past, but I think that these days a woman is actually more likely to get hired or promoted than a man. Companies want to be seen as fair, so they're anxious to have lots of women in good positions.



And besides, one reason women may not get promoted as much as men is that they often take breaks in their careers to have babies. That's biology; you can't change it.



You two are really out of touch. Women aren't given a fair shake in the workplace because it's still dominated by the "old boy's club"—you know, the guys at the top who have all the power. That's why there have to be laws to ensure that women can have the same chance as men to have a career that goes someplace.



discrimination:
the practice of treating some people differently from others because of prejudice toward a group to which they belong

The issue of **discrimination**—both intentional and unintentional—against women in the workplace is something that society has been made aware of over the last few decades, but it's really just one aspect of the broader matter of **human rights** in relation to employment. This topic—which involves the unfair treatment of employees on the basis of things like race, colour, religion, age, sexual orientation, and physical disabilities—is dealt with in Legal Studies 1020, a course you may have already taken.

human rights:
rights that protect people from discrimination from others in certain areas of life

In this lesson, the focus will be specifically on the problems and the rights of women in the workplace. The good news is that this is an area where tremendous progress has been made in recent years, but much still needs to be done.

1. Before you get started, take a few minutes to think about your own views on the issue of discrimination against women in the workplace. From your own experience and/or from what you've heard and read, does discrimination of this sort still exist to a significant extent? If so, what are some of the ways it occurs? What can or should be done to solve the problem?

Write up your answer in one or two pages. If you're working with a friend, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



The Issues



To get you started thinking generally about discrimination in the workplace, open your textbook to pages 58 and 59, and read all of section “2.6: Human Rights.” As you read, pay special attention to the difference between intentional and unintentional discrimination. When you’ve read this material, answer the questions below.

2. a. Laura applies for a job in a warehouse. Though she’s petite, Laura is remarkably strong and fit; and she loves physical work. The man who interviews her, however, takes one look and tells her that this is “man’s work” and that she just isn’t big enough. Though he doesn’t mention it to Laura, he also feels sure that the other employees at the warehouse would never accept a woman on the floor, and they’d probably make Laura’s life miserable.

What sort of discrimination has Laura suffered in this situation?

- b. Laura is determined to get a job that’s physical. She consults the want ads in the newspapers and finds just what she’s looking for. Unfortunately, however, the ad says candidates for the job must be at least 1.8 m tall and weigh 82 kg.

What sort of discrimination has Laura suffered in this situation?

- c. Eventually, Laura decides that if she can’t get a manual job, she’ll still do something that capitalizes on her trim physique: she’ll model clothes. When she approaches a company, however, she’s told that the only modeling job they have at present is for men’s clothing. This time, Laura thinks that enough is enough. She tells the company official that if he doesn’t hire her for the job, she’s going to lodge a complaint of sexual discrimination with the Human Rights and Citizenship Commission.

Do you think Laura would have a case? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Sexual (or gender) discrimination occurs in various guises in the workplace. It doesn't affect women only. Sometimes men experience it too; and when this happens, it's every bit as objectionable as when the victim is female. But the issue remains primarily a female one, so the emphasis here is on that aspect of it.

Here are some of the most common forms of discrimination against women in the workplace:

- a reluctance or refusal to hire women to do jobs for which they're qualified simply because they're women
- a reluctance or refusal to promote qualified women to positions of authority
- the practice of having lower pay scales for jobs traditionally done by women than for jobs traditionally done by men
- the practice of actually paying women less than men when they do the same job
- sexual harassment in the workplace



Before taking a look at the laws that presently exist to protect workers from sexual or gender discrimination, there are two textbook readings you should look at. Turn first to page 73 and read the material under the subheading "Employment Equity." Then turn to page 574 and read from the heading "Human Rights in Employment" through to the end of page 577, skipping the two case studies. (You'll find that some of this material repeats what you've already read, but there's a lot of new information as well.) When you've completed the readings, answer the following questions.

3. Pay equity is a hotly debated issue in the workplace today. While women have made great strides in recent years in catching up with men on the pay scale, on average they still make less money than men do. In your own words describe the difference between the principle of "equal pay for equal work" and that of "equal pay for work of equal value."

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

4. Alberta bases its laws on the principle of equal pay for equal work. The province has no laws requiring employers to pay equal wages for work of equal value. It's extremely difficult to weigh the value of one type of work against another—for instance, the work a secretary does compared to the work a truck driver does. For this reason, the market is allowed to regulate itself; employers pay what they have to to get the workers they want. Some supporters of women's rights claim that this is unfair because traditional male jobs tend to pay more than traditional female ones.

What are your thoughts on this issue? Should there be a law in Alberta dictating equal pay for work of equal value? Explain your answer in a short position paper. If you're working with a friend, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

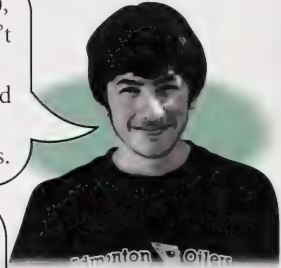


affirmative-action programs: programs designed to increase the numbers of people from disadvantaged groups in occupations where traditionally those groups have been underrepresented

Another important issue your textbook discusses is that of employment equity—the principle of giving preference to certain groups when hiring to increase their presence in the workplace. Sometimes called **affirmative-action programs**, these policies can allow businesses to hire people from groups seen as underrepresented in that area of work and considered disadvantaged in terms of getting jobs within it. Often, women are considered such a group.

Normally, questions on job applications concerning things like gender, race, age, and religion are forbidden, as you'll see later; however, if those questions are asked as part of an affirmative-action program, they're sometimes allowed because the intent is to discriminate in favour of certain groups rather than against them.

Yeah, we looked at that in Legal Studies 1020, but I still say it's discrimination and shouldn't be allowed. If I work hard to get the qualifications I need for a job and I get passed over because the company wants to hire women, I'm a victim of unfair hiring practices.



I disagree. Men have always had the upper hand in getting jobs, and men in positions of power seem to hire and promote more men. Women and other disadvantaged minorities need affirmative-action programs—at least until the playing field is levelled.



5. What are your views on pay-equity and affirmative-action programs? Does the end justify the means? Present your ideas in a one-page position paper or debate the issue with another student.

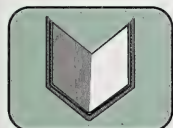
Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.



harassment:
unwelcome
behaviour
toward another
(who is often in
a subordinate
position)

**quid pro quo
harassment:**
employment
harassment that
involves a person
in a position
of authority
demanding favours
in return for fair
or preferential
treatment

**poisoned work
environment
harassment:**
employment
harassment in
which one person is
subjected to hostility
and rejection by
co-workers because
of some perceived
difference



Another issue of concern to women in the workplace (though once again, men are sometimes victimized as well) is sexual **harassment**. Your textbook distinguishes between two types of harassment: **quid pro quo** and **poisoned work environment**.

6. Rachel gets a new job and discovers that she likes the work very much. Her problem, however, is her boss. On two occasions, he asks Rachel for a date, but she tells him she has a boyfriend. He asks her out again, but this time makes it clear that if she refuses, she can kiss her job goodbye.

What form of harassment is this—**quid pro quo** or **poisoned work environment**?

7. Read *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* on pages 575 and 576 of your textbook; then answer the **first two** textbook questions that follow the case study.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

The Legislation

Now that you have an idea of some of the human-rights issues that women (and sometimes men) can face in the workplace, it's time to look at just what laws do exist to protect people who have been victimized in ways you've been reading about. For the rest of this lesson, you'll look at some of the statutes offering protection from gender discrimination in the workplace.

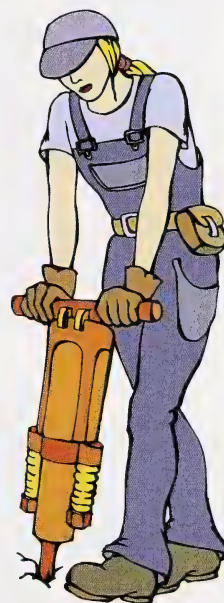
Legislation exists at both the federal and the provincial level to protect workers from gender discrimination; for the majority of workers, however, the provincial statutes are the more important ones.

Federal Law

There are three federal statutes you should be aware of that offer protection of human rights in the workplace. They are

- the *Canadian Charter of Rights and Freedoms*
- the *Canadian Human Rights Act*
- the *Employment Equity Act*

The *Canadian Charter of Rights and Freedoms* is different from other legislation in that it's part of Canada's *constitution*—the basic set of laws on which all other laws are based. This means that if any other law passed by any government in Canada is found by the courts to be in violation of the *Charter*, that law, or at least the part of it that's in violation, has no force.



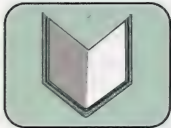
You may have looked at the *Canadian Charter of Rights and Freedoms* quite closely in Legal Studies 1020 or in a Social Studies course. The entire *Charter* appears in your textbook on pages 600 to 603.

The most important parts of the *Charter*, for the purpose of this lesson, are Section 15, which guarantees Canadians equality rights, and Section 28, which guarantees the equality of males and females.

Going Further



Take a few minutes now—or at a later time—to read the *Canadian Charter of Rights and Freedoms* on pages 600 to 603 of your textbook. In this lesson you'll be looking chiefly at Section 15, but consider investigating other sections to learn more about the rights and freedoms guaranteed Canadians.



Turn to page 53 in your textbook and read the material under the heading “Sections 15 and 28: Equality Rights.” Then turn to the *Charter* itself at the back of your textbook and read Section 15 (on page 601) and Section 28 (on page 603). When you've finished these readings, answer the questions that follow.

8. a. What is the significance of the wording “in particular” in Section 15 (1)?
- b. Section 15 of the *Charter* guarantees equality rights to members of both sexes. Does this rule out affirmative-action programs that might, in effect, discriminate against men? Defend your answer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further



Your text reading told you that Section 28 was included in the *Charter* to protect equality between the sexes from the “notwithstanding clause.” The “notwithstanding clause” of the *Charter* is a very important—and controversial—one. To learn about the notwithstanding clause, read the material on page 47 of your textbook. Then read the clause itself; it's Section 33 of the *Charter*, on page 603 of your textbook.

The *Canadian Charter of Rights and Freedoms* is a law that's used to judge the legality of other Canadian laws. For example, the Supreme Court of Canada has ruled that Alberta's *Human Rights, Citizenship and Multiculturalism Act*, a statute you'll soon be learning about, must be interpreted so as to forbid discrimination based on sexual orientation—even though the government that created this statute had chosen not to include this sort of discrimination in its human rights legislation.

Despite the immense importance of the *Canadian Charter of Rights and Freedoms*, the fact is that the day-to-day struggle over human rights issues in the workplace is usually based on other, more specific legislation. This is the legislation that you'll be examining next. For the moment, though, the focus is still on federal statutes.

The *Canadian Human Rights Act*, passed by Parliament in 1977, applies to a limited number of workers—people employed in areas over which the federal government has jurisdiction across Canada. Examples would be employees of banks, the armed forces, ships, and railways. This statute addresses the overall problem of discrimination in the workplace, and gender discrimination is, as you've seen, a big part of such discrimination.

This statute establishes a body called the Canadian Human Rights Commission. If a worker in a federally controlled industry has a complaint, he or she can lodge it with the commission, which, if it proves necessary, can set up what's called a **tribunal** to look into the matter. If the tribunal finds that there has, indeed, been discrimination—gender discrimination, for example—the offending employer may be ordered to set things straight in the workplace or to pay damages to the wronged employee.



tribunal: a body with the authority to hear and decide disputes and to order an offending party to make amends

9. What follows are clauses from Section 11 of the *Canadian Human Rights Act*. Section 11 deals with the issue of pay equity. Use these clauses to answer the questions that come after them.

11. (1) It is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value.
- (2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required

in the performance of the work and conditions under which the work is performed.

- (4) Notwithstanding subsection (1), it is not a discriminatory practice to pay male and female employees different wages if the difference is based on a factor prescribed by guidelines, issued by the Canadian Human Rights Commission . . . to be a reasonable factor that justifies the difference.

¹ Department of Justice Canada, *Canadian Human Rights Act* (Ottawa: Department of Justice Canada). Reproduced by permission.

- a. Does the *Canadian Human Rights Act* use the principle of equal pay for equal work or equal pay for work of equal value? Defend your answer by referring to the *Act* itself.
- b. Does the *Act* insist that male and female employees performing work of similar value invariably get paid at the same rate? Defend your answer by referring to the *Act* itself.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further



If you'd like to look at the *Canadian Human Rights Act* in its entirety, you can access it at this website address, part of the Department of Justice Canada's website:

<http://laws.justice.gc.ca/en/H-6/31077.html>

Another federal statute you should be aware of is the *Employment Equity Act*. The first *Employment Equity Act* became law in 1986, and ten years later, a new version was passed.

Like the *Canadian Human Rights Act*, it applies to workers in areas controlled by the federal government. More specifically, it applies to employers who employ 100 or more workers in a federal undertaking, including Crown corporations and federally regulated private companies that want to do business with the federal government. It's estimated that 8 percent of the Canadian labour force is affected by this statute.

Crown corporation:
a company
through which
the government
carries on business
activities



The purpose of the *Employment Equity Act* is

... to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and ... to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.¹

¹ Department of Justice Canada, *Employment Equity Act* (Ottawa: Department of Justice Canada). Reproduced by permission.


The *Employment Equity Act* requires employers to take whatever steps are necessary to achieve these ends, but one of the steps spelled out is to implement positive measures to “correct underrepresentation” of groups seen as disadvantaged in certain jobs or at upper levels within their areas of work. What this boils down to is a directive to implement affirmative-action programs where they seem needed.

10. What four groups does the *Employment Equity Act* aim at eliminating discrimination in the workplace?
11. A company falling under the authority of the *Employment Equity Act* runs a job advertisement containing this information: “Female candidates will be given preference over male candidates if qualifications are similar.”


This is clearly a discriminatory hiring practice. Is it legal? Explain your answer.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further



To learn more about the *Employment Equity Act* and the struggles of women, in general, to achieve equality on the job, read the material on page 73 of your textbook under the subheading “Employment Equity.”

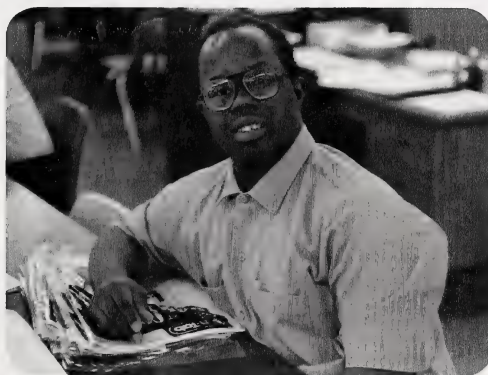


The entire *Employment Equity Act*, like the *Canadian Human Rights Act*, can be found on the Department of Justice Canada website. Here's the address:

<http://laws.justice.gc.ca/en/E-5.401/49886.html>

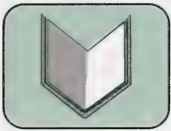
In fact, you can access any statute passed by the Government of Canada at the Department of Justice website. Use the address that follows. Just click on the letter of the alphabet with which the name of the statute begins and look for the law you're after in the list that will appear.

<http://laws.justice.gc.ca/en/title/A.html>



Alberta Law

A relatively small number of employees are affected by the *Canadian Human Rights Act* and the *Employment Equity Act*. By contrast, provincial and territorial human rights legislation governs everyone in the province. In Alberta, the statute that does this is the *Human Rights, Citizenship and Multiculturalism Act*. This statute established the Human Rights and Citizenship Commission, which administers the *Act*. If employees think their rights have been violated, this commission is the group they should contact. It will investigate the matter and come up with a solution.



To get an idea of how an employee can go about dealing with an infringement of rights at the workplace, turn to page 60 of your textbook and read section “2.7: Human Rights Legislation” to the top of page 62 (skipping the sidebar material on page 60 and the case study on page 61). Then answer the following questions.



12. Lu's rights under the *Human Rights, Citizenship and Multiculturalism Act* have been infringed. She takes her case to the Human Rights and Citizenship Commission, where her employer defends himself by pointing out that another Alberta statute seems to give him the right to do precisely what it is that he's done. What would the commission's finding in this situation be? Explain your answer.
13. Set up a simple diagram with boxes and arrows as illustrated below. Then fill in the boxes to show the procedures a victim of gender discrimination in the workplace might go through in getting the problem corrected. The diagram has been started for you. Use as many boxes as necessary.



14. Lorna files a complaint with the Human Rights and Citizenship Commission. Her employer tells his other employees that if any of them give evidence against him, he'll fire that person on the spot.

- a. Is this legal?
- b. What penalty will the employer likely suffer if his actions are revealed?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

But what about the *Act* itself? Following are a few clauses taken directly from the *Human Rights, Citizenship and Multiculturalism Act*. Use them to answer the questions that come after them.

6(1) Where employees of both sexes perform the same or substantially similar work for an employer in an establishment the employer shall pay the employees at the same rate of pay.

7(1) No employer shall

- (a) refuse to employ or refuse to continue to employ any person, or
- (b) discriminate against any person with regard to employment or any term or condition of employment, because of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or of any other person.

8(1) No person shall use or circulate any form of application for employment or publish any advertisement in connection with

employment or prospective employment or make any written or oral inquiry of an applicant

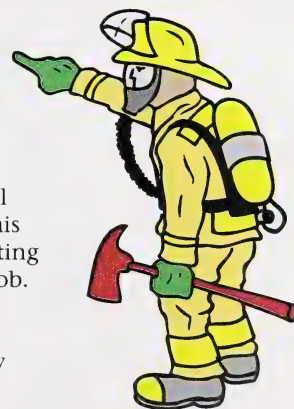
- (a) that expresses either directly or indirectly any limitation, specification or preference indicating discrimination on the basis of the race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status of that person or of any other person, or
- (b) that requires an applicant to furnish any information concerning race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income or family status.

(2) Subsection (1) does not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

15. Is this statute based on the principle of equal pay for equal work or equal pay for work of equal value? Defend your answer by referring to the statute.

16. Firefighters must be physically strong, very fit, and able to perform demanding physical feats—such as carrying unconscious adults down ladders—under highly stressful conditions. People's lives frequently depend on it. For this reason, a fire department ran an employment ad stipulating that only male candidates would be considered for the job.

According to *Alberta's Human Rights, Citizenship and Multiculturalism Act*, is this legal? Explain your answer by referring to the statute.



¹ *Human Rights, Citizenship and Multiculturalism Act* (Government of Alberta, 2000). Reproduced by permission.

17. From what you've seen of federal and Alberta statutes that protect women's rights in the workplace, which of the two governments seems to have taken a stronger (some might say more extreme) position on offering such protection? Defend your answer with references to the statutes in question.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further



- For some good practical information on the legalities involved in on-the-job sexual harassment in Alberta, go to this website, operated by Student Legal Services of Edmonton:

<http://www.slsedmonton.com/civil/index.html>

There, click on "Sexual Harassment in the Workplace" on the right-hand side of the panel; you'll be given a very readable and practical guide to the law in Alberta on the topic of workplace harassment.

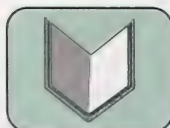
- This lesson began by pointing out that the struggle to ensure that men and women are treated equally in the workplace is part of the much larger issue of human rights in general. Many groups other than women—including the disabled, the elderly, the poor, members of various ethnic groups, and homosexuals—struggle to achieve fairness on the job and in other areas of their lives.

In particular, the equality struggles of Canada's Aboriginal peoples as well as of homosexuals have rightfully achieved a great deal of public awareness in recent years.



Chapter 3 of your textbook provides a good introduction to the legal aspects of equality struggles of these types—along with some good background information on women's fight for equality. If you'd like to learn more, go to that chapter (it begins on page 67) and see what you can discover.

Or if you have a specific issue, such as the struggles of the country's indigenous people, consider finding the relevant material on that issue and limiting yourself to learning more about it.



Gender discrimination in the workplace is a topic you'll hear a good deal about if you follow the news; try to keep an eye or ear out for the latest developments.

In the last part of this lesson, you were introduced to several statutes, both federal and provincial. In the next lesson you'll be looking at a few more pieces of legislation, at both levels of government, that affect workers and their employers.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment, and answer questions 3 and 4.

Suggested Answers

1. Answers will vary. Most people are aware of the problem, whether it be from personal experience, the experience of friends or family members, or simply from keeping up with the news. Of course, great strides have been made over the past few decades, and today women enjoy greater equality than ever before.

Remember that discrimination based on gender isn't only a female problem; men, too, can be victims of sexual discrimination in the workplace.

2.
 - a. Laura has suffered intentional discrimination—or what's sometimes called *differential treatment*.
 - b. Here Laura is likely the victim of unintentional discrimination. Of course, it's possible that the ad was designed specifically so that women wouldn't qualify, but the likelihood is that it was created in the honest belief that only people of a certain size could do the work.
 - c. No, Laura wouldn't have a case here; she should have gone to the commission on the two previous occasions. As you'll see later in this lesson, discrimination based on gender is allowed if there's a *bona fide* justification for it—in other words, a sound, defensible reason why the job should go to a member of one gender or the other. A company that insists on hiring men to model its men's clothing has a *bona fide* reason for this policy.
3. The principle of "equal pay for equal work" means that men and women who are doing jobs that are substantially similar should be paid the same amount for doing it. The principle of "equal pay for work of equal value" means that even if the work men and women are doing is very different, if it's of equal value to the employer, those doing it should be paid at the same rate.
4. Answers will vary. This is a very difficult issue. On the one hand, it can be argued that, traditionally, "men's work" has paid more than "women's work" even if the latter is equally difficult and equally as important. This simply reflects, some say, a societal prejudice in favour of men and the work they usually do. This situation must be rectified, the argument goes, by insisting that those who do work of equal value be paid equally.

On the other hand, it can be argued that it's impossible for an employer to artificially decide what work is of equal value. How do you compare the value of work in a mine shaft, for instance, to clerical jobs? Traditionally, the marketplace has determined how much a job is worth, and employers have had to pay that amount to hire the workers they need. To force employers to do anything else, it's maintained, is both unfair and likely to cause them serious financial hardships.

5. Positions on this issue will, of course, vary. Proponents of affirmative action believe that it's important to get excluded minority groups into positions where they can be successful and serve as role-models for others. They also point out that the men now in positions of power will tend to go on hiring and promoting men unless steps are taken to change this process. For these reasons, they believe that temporary programs put in place to correct this problem are justifiable. Opponents of affirmative-action programs believe that discrimination on the basis of an irrelevant characteristic such as gender or skin colour always victimizes someone and is never justifiable. It's an interesting question, isn't it?
6. This is a classic example of *quid pro quo* harassment.
7. **Textbook question 1:** The discrimination involved in this case is discrimination based on gender (or sex).

Textbook question 2: The government had failed to follow the recommendations of a follow-up study to examine the impact of the new fitness test on women. Rather, the government had simply dismissed Meiorin for failing to live up to the new aerobic-run standards. Meanwhile, evidence had shown that the new standard was such that relatively few women could pass it, while most men could. As well, there is no evidence to show that forest firefighters need this standard of aerobic fitness to do their jobs well. The government, it was decided, had failed to prove that Meiorin was a safety risk because she'd failed the test. The government hadn't accommodated Meiorin to the point of "undue hardship."

8. a. The wording "in particular" means that the list may not cover every basis of discrimination. A defendant accused of discrimination can't simply point at the list and say that because the type of discrimination he or she is accused of doesn't appear there, it's legal.
- b. No, Section 15(2) specifically says that Subsection 1 doesn't rule out programs designed to help disadvantaged groups—including those disadvantaged because of their sex.
9. a. The *Act* uses the principle of equal pay for work of equal value. In Section 11(1) we read that it's discriminatory to pay men and women different amounts for "... performing work of equal value."
- b. No, Section 11(4) says that a "reasonable factor," as stated in guidelines issued by the Canadian Human Rights Commission, can make it non-discriminatory to pay men and women different rates. This means that in some situations an employer can justify paying men more than women (or *vice versa*), but there would have to be a very good reason for it.
10. The four groups are
- women
 - aboriginal peoples
 - people with disabilities
 - members of visible ethnic groups
11. Yes, this practice is certainly legal; in fact the *Employment Equity Act* requires employers to take positive action like this to correct imbalances in their businesses. Affirmative-action programs are a major component of the *Employment Equity Act*.

12. Your textbook reading points out that “Within each province and territory, the human rights laws can overrule any other provincial or territorial law.” That means that if something in Alberta’s *Human Rights, Citizenship and Multiculturalism Act* conflicts with something in another Alberta statute, the former will take priority. In the situation in this question, Lu, not her boss, should win the case.
13. Diagrams will vary somewhat, but the order in which procedures appear should be the same. Compare your diagram to the one that follows.



It’s important to understand that the problem can be resolved at any stage, and the earlier this happens the better it is for both parties. It’s always better to come to a mutually satisfactory solution through discussion than to be forced to do something by a tribunal or the courts.

14. a. No, it’s not legal.
b. The employer will, in all likelihood, be fined.
15. The principle on which this statute is based is equal pay for equal work. Section 6(1) of the *Act* says “Where employees of both sexes perform the same or substantially similar work . . . the employer shall pay the employees at the same rate of pay.”
16. No, this is illegal. Section 8(1) says “No person shall . . . publish any advertisement in connection with employment . . .
- (a) that expresses . . . any limitation, specification or preference indicating discrimination on the basis of the . . . gender of any person.”¹
17. The federal legislation has taken a stronger position by adopting the principle of equal pay for work of equal value and by requiring employers to adopt policies like affirmative-action programs. This isn’t to say that the Alberta government isn’t doing enough; in fact, some people would argue that the federal government has gone too far. There is a philosophical difference at work here, however. Which side do you support?

¹ *Human Rights, Citizenship and Multiculturalism Act* (Government of Alberta, 2000). Reproduced by permission.

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Lesson 4: Other Employment Legislation



Imagine that you're hired to work on a construction site. One day, another worker causes an accident, and you're injured. You can't work for three months. Are you entitled to any financial compensation so you can go on paying the rent until you can return to work?

Here's another scenario: You've worked for a company for five months and then get laid off. Can you claim employment insurance? If so, how much? And for how long will you get it?

There are many laws in Canada designed to regulate the workplace and to provide protection of various sorts for working people. You've already looked at a few such statutes:

- Alberta's *Human Rights, Citizenship and Multiculturalism Act*
- the *Canadian Human Rights Act*
- Canada's *Employment Equity Act*

In this lesson, you'll be taking a look at several more pieces of legislation, both federal and provincial, that affect the workplace. These quick examinations will give you an idea of the laws that exist to protect you as you enter the world of work.

Federal Statutes

Three federal statutes that you should be aware of are

- the *Canada Labour Code*
- the *Public Service Staff Relations Act*
- the *Employment Insurance Act*

Of these three, the one that affects workers most directly is the *Employment Insurance Act*. The first two, like the other federal statutes you've looked at, concern people working in some capacity for, or under, the federal government.

The Canada Labour Code

The *Canada Labour Code* and the *Public Service Staff Relations Act* apply to people across the country who are employed by the Government of Canada. Both these pieces of legislation are generally considered to be advanced and progressive statutes.

The *Canada Labour Code* applies to people working for the federal government, Crown corporations, and a few related industries. This statute deals with the following areas:

- fair employment practices
- standards of employment (things like wages and holidays)
- working conditions
- industrial disputes and union activities



To learn a bit more about the *Canada Labour Code*, turn to page 573, and read the material under the heading “Federal Employment Legislation” on pages 573 and 574.

1. While the *Canada Labour Code* applies to only about 10 percent of Canadian employees, it is, nevertheless, considered an important piece of legislation. Why is this a particularly significant statute in the area of labour law?

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.

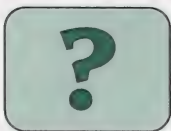
The Public Service Staff Relations Act

The *Public Service Staff Relations Act* applies only to employees of the federal government. In other words, its scope is more restricted than that of the *Canada Labour Code*. It allows government employees to bargain (or negotiate) with the government much as trade unions bargain with the businesses who employ their members (something you'll be investigating in the next section). This means that federal government workers have the right to strike in attempting to get their demands met—a right provincial government employees don't have in Alberta for instance.

2. The *Public Service Staff Relations Act* allows employees of the federal government to go on strike, but this privilege isn't extended to provincial government employees in Alberta. You're going to be looking at unions and strikes more closely in the next section, but before getting further into those issues, what are your thoughts on this question? Should employees of the government, whose salaries are paid for by taxpayers, have the right to strike? Support your thoughts with clearly presented reasons.

If you're working with a friend, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.



Going Further

In Lesson 3 you were given a website address that allows you access to any federal statute. That address, once again, is

<http://laws.justice.gc.ca/en/title/A.html>

If you'd like to learn more about either the *Canada Labour Code* or the *Public Service Staff Relations Act*, you can find both statutes at this website, maintained by the Department of Justice Canada.



The Employment Insurance Act



The *Employment Insurance Act* is a federal statute that affects workers across the country. This statute sets up a system whereby workers who lose their jobs can get financial assistance while they look for new employment.

Unemployed Canadian workers have been collecting government payments since 1942 from the Employment Insurance program, often simply called EI. Basically, the system works like this: Workers and their employers both make monthly contributions into an employment insurance fund; then, if workers get laid off, they can collect money from this fund (if they meet certain basic criteria) for up to 45 weeks—or until they land another job. Most claimants can get 55 percent of what they were earning before going on EI up to a ceiling of \$413 a week. For low-income workers, the ceiling can be higher.

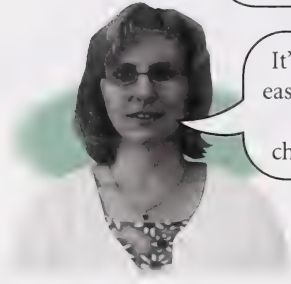
The rules of the EI system are rather complex, and they change from time to time; but, depending on the unemployment rate in the part of the country where you live, you have to have worked from 420 to 700 hours to qualify for payments if you lose your job.



I remember that from Legal Studies 1020, and I still don't like it. I mean, just because I live somewhere where there's low unemployment, I'm expected to work longer before I qualify for payments if I lose my job. That doesn't seem fair.



It's set up this way because it should be easier for you to get, and keep, a job here than it would be somewhere with chronically high unemployment rates.



But it means that someone in another part of the country—say in the Atlantic region, for instance—can work for less time than I have to and collect more money in insurance.

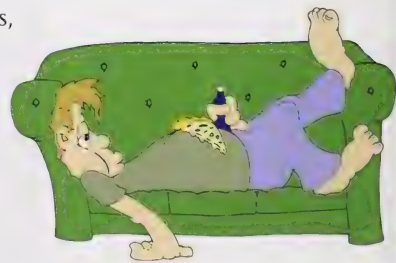


True, but would you willingly trade places with that person and live somewhere where work is scarce and you have to rely more on the government? Remember, the system is designed to help Canadians who've lost their jobs until they get back on their feet; and the need is greater in some parts of the country than in others.



The EI system isn't just for people who get laid off. Workers who become too ill to work, who are pregnant, or who have or adopt children are also entitled to "special" benefits if they meet the basic requirements. So are workers who must care for a sick family member at significant risk of dying. In cases like these, you have to work a minimum of 600 hours to qualify.

To figure out how much you can claim in EI benefits, the government takes your average earnings in the 26 weeks just prior to your job loss and does a mathematical calculation. Then you'll start receiving regular cheques, but this isn't meant to support you in a life of idleness; the government expects you to be actively looking for a job and to take a reasonable job offer when it comes along. They'll monitor you closely; and if they find out you're not really trying to go back to work, your benefits will likely be cut off.



Your Rights and Responsibilities Regarding EI

Rights	Responsibilities
<ul style="list-style-type: none"> • file a claim for EI • get help filing a claim • get help finding a job • receive regular or special EI benefits • appeal any decision about your benefits 	<ul style="list-style-type: none"> • actively look for work • be willing, ready, and able to work • report all money you earn while on EI • pay income tax on EI benefits

One thing to remember: if you do lose your job, you won't just automatically start receiving EI cheques in the mail. You have to apply to get employment insurance, and fill out the appropriate forms. These are available from your local Human Resources Development of Canada (HRDC) office, or you can get them online at this address:

http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/ei.shtml

You can also apply directly online if you wish. However you apply, remember that there's a two-week waiting period for which no benefits are paid, and then it will likely be another few weeks before cheques begin to arrive; so if you lose your job, you should apply for payments right away.

Going Further

Take a look at the website address presented above and see what else you can learn about employment insurance.

You can also learn about the basics of Employment Insurance in Alberta from the Dial-A-Law program you've been introduced to previously. Remember, to access this information provided by Calgary Legal Guidance, simply dial either 234-9022 in Calgary or 1-800-332-1091 (toll free) elsewhere in the province. The number of the recording you're after is 623.

3. Canada has one of the world's most generous employment insurance programs; it's something most Canadians are proud of and grateful for. Some people, however, criticize it for being too generous. One criticism is that in parts of the country where unemployment is very high or largely seasonal (in fishing areas, for instance) people have gotten used to living much of their lives on government payments. Other critics point out that being required to pay EI premiums each month for all their employees might make it very difficult for businesses to hire people (remember that both workers and their employers contribute to the fund). These critics say that if EI became less costly, employers could hire more workers, and the unemployment rate would drop.

What are your thoughts? Express them in a one-page position paper. Alternatively, take sides and debate the issue with a classmate.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.



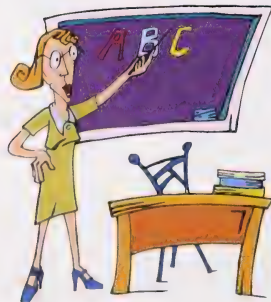
Alberta Statutes



There are many Alberta statutes regulating employers and employees in specific industries, but they go beyond the scope of this course. However, three general provincial statutes affecting labour law that you should be aware of are

- the *Labour Relations Code*
- the *Occupational Health and Safety Act*
- the *Workers' Compensation Act*

The *Labour Relations Code*



Alberta's *Labour Relations Code* is the statute governing the formation of unions in the province. This legislation specifies the types of occupations that can organize as unions—for example, teachers, nurses, and clerical workers.

This statute also establishes the Alberta Labour Relations Board, which administers the provisions in the *Code*. You'll be hearing more about the *Labour Relations Code* in Section 3, where you'll be looking at unions more closely.

The Occupational Health and Safety Act

The *Occupational Health and Safety Act* establishes standards for the protection and promotion of workers' health and safety throughout Alberta. It outlines workers' rights and the responsibilities of employers, and it provides a framework within which employees and employers can work together to keep work sites safe and free of health hazards.

The *Act* gives the government the right to make new regulations about health and safety as they're needed and to appoint inspectors to see that the regulations are being obeyed. These regulations cover things like noise levels, chemical hazards, first-aid procedures, and general safety, to name a few. In 2003, a new *Occupational Health and Safety Code* was released in Alberta, replacing many of the regulations that had been created under the *Occupational Health and Safety Act*.

The *Occupational Health and Safety Act* affects most workers in Alberta. The major exceptions are domestic workers, employees of the federal government and workers in federally regulated industries (as you've seen, they're governed by their own legislation), and some agricultural workers.

According to this statute, employers must do everything they reasonably can to protect workers' health and safety. For example, they must maintain equipment in safe working order and ensure that hazardous substances are properly labelled and stored. As well, they have to establish safe procedures at the work site and ensure that they're followed. Employers also have to make sure their employees have the skill and training necessary to do their jobs safely.

In some situations, the *Act* requires employers to prepare a code of practice for the work site. This may be a booklet, manual, or poster that outlines the safe way to do things. Employers must inform employees of the code and make it readily available.

But what about the responsibilities of employees? Workers have a legal obligation to refuse to perform any job if they believe doing it would pose an imminent danger to themselves or others. For example, a worker asked to work in a trench more than 1.5 m deep that's not protected by shoring or cutbacks must refuse to do so. This is an unsafe working environment and is also against regulations.

When a work refusal occurs, the employer is required to investigate the situation and to eliminate any dangers. If the job is dangerous only because the worker in question wasn't qualified to do it, all the employer has to do is assign a better-trained employee to the task. This employee, however, must be told that another worker has refused to do the job; this information alerts the second employee to the fact that the task may involve dangers that he or she should carefully consider. The new worker also has a right to turn the task down.



Workers and employers may be prosecuted for disobeying the *Act* or for failing to comply with an order given by an officer of the Occupational Health and Safety Council. Fines and/or prison sentences can result.

4. Ms. Carmichael employs Adnan, Jordan, and Caleb. In each situation that follows, indicate whether the person involved is making the legally correct decision.
- a. Ms. Carmichael has boxes of DDT, a banned hazardous substance, stored in her warehouse, but she doesn't bother telling Jordan, a new employee.
 - b. Jordan is hammering nails into some boards when the structure he's working on begins to sway. He's worried that it will collapse on him if he keeps hammering, but he doesn't know what to do. Finally, he simply tells Ms. Carmichael he won't hammer in any more nails.
 - c. Ms. Carmichael fires Jordan for disobedience when he refuses to continue hammering out of fear for his safety.
 - d. Adnan has been doing construction work for 20 years. Ms. Carmichael tells him that Jordan has refused to hammer any more nails for fear the structure will collapse. Then Ms. Carmichael instructs Adnan to finish the job.
 - e. When Adnan also refuses to work on the structure, Ms. Carmichael calls over Caleb, her most senior employee. This time, she doesn't mention a word about Adnan's and Jordan's refusals. She simply tells Caleb to finish the job.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



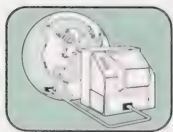
It's important to note that many details could change the way the *Occupational Health and Safety Act* might apply to any given situation. If you ever find yourself in a real-life situation that could put you or someone else in danger, be sure to get up-to-date information and advice from the Alberta government's Department of Human Resources and Employment.

Going Further

To learn more about Alberta's *Occupational Health and Safety Act*, take a look at this web address, part of the website of the Department of Human Resources and Employment:

<http://www3.gov.ab.ca/hre/whs/index.asp>

Check out the "Workplace Health and Safety" links in the top-right corner, especially.



The Workers' Compensation Act



What happens if you're injured on the job and, as a result, can't work? In Alberta, the *Workers' Compensation Act*, a provincial statute that became law in 1915, provides for a program known as *Workers' Compensation*—a program that gives financial support to employees who find themselves in this position.

Most, but not all, Albertan employees are covered by Workers' Compensation. Employers pay monthly premiums for all their workers; the workers themselves aren't required to contribute. These premiums create a fund that supplies money to workers who qualify for help. If a covered employee is hurt on the job, that employee can collect from the fund until he or she can return to work.

What if I get hurt in a car accident driving to work? Or what if I don't get hurt but get sick because of my job—from working with chemicals, for instance?

You can't get compensation for getting hurt driving to work—unless, of course, you're in a company-operated vehicle. But if you get too sick to work, and you can establish that the illness was caused by your job, you're entitled to compensation.

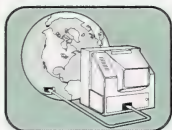


The amount of compensation you get depends on how badly you're hurt; if you're totally disabled, you can get 90 percent of your usual earnings; if you can still do some work, the Workers' Compensation Board, which administers the fund, will determine how much you'll receive. If you're killed in an accident while on the job, and you have a spouse or adult interdependent partner who's financially dependent on you, your spouse or partner will get what you would have received if you'd been totally disabled.

An interdependent partner is someone who meets the criteria laid out in the *Adult Interdependent Relationships Act*. A cohabiting partner who fails to meet these criteria won't normally receive compensation under the *Workers' Compensation Act*.



Going Further



If you've taken Legal Studies 1010 or 2010, you should be familiar with Alberta's *Adult Interdependent Relationships Act*. But if you haven't done this and you'd like to learn more—for example, if you'd like to find out just who qualifies as an adult interdependent partner—here's a website address that can give you all sorts of information in an easy-to-understand format:

<http://www.law-faqs.org/ab/inter.htm>

Just click on the topics you'd like to investigate.

As with EI, you must report an injury on the job immediately. It's important to remember that if you are entitled to, or receive funds from, the Workers' Compensation program, you can't usually also sue your employer. In this way, the program protects employers as well as employees.

5. Parker is killed when the brakes on the company truck he's driving fail at a level crossing. At the time of his death, he's earning \$1000 a week. His common-law partner, Michelle, with whom he's been living for four years, is a college student and has no income of her own.
 - a. Do you think that Michelle should be entitled to Workers' Compensation? Explain why or why not.
 - b. Do you think that she will be entitled? Give your reasons. (**Hint:** The website address given in the preceding Going Further activity might be of help here.)
 - c. If you think she will be entitled, how much will she likely get?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

- Here's the website address of the Workers' Compensation Board of Alberta. If you're interested, you can learn more about how this system works to compensate Alberta workers for on-the-job injuries, illness, and death.

<http://www.wcb.ab.ca/home/>

- You can also learn the basics of Workers' Compensation in Alberta from the Dial-A-Law program introduced earlier. Once again, to access this information provided by Calgary Legal Guidance, simply dial either 234-9022 in Calgary or 1-800-332-1091 (toll free) elsewhere in the province. The number of the recording you're after is 621.



And that's the end of this brief overview of federal and provincial statutes governing labour law. You now have a grounding in the basic laws you and your employer will have to obey as you enter the work force. Remember, though, that this is only a very introductory look; and don't forget that laws can—and do—change frequently. If you ever think your rights as a worker are being infringed upon, be sure to get up-to-date legal advice before you take any action.

To finish up this lesson and this section, here's one last question to test your mastery of the statutes you've been introduced to.

6. In this section you've encountered a number of statutes, both provincial and federal, that contribute to the body of legislation governing workers and employers. The principal statutes you've looked at are shown in the chart that follows.

Albertan Statutes	Federal Statutes
<ul style="list-style-type: none"> • the <i>Employment Standards Code</i> • the <i>Labour Relations Code</i> • the <i>Occupational Health and Safety Act</i> • the <i>Human Rights, Citizenship and Multiculturalism Act</i> • the <i>Workers' Compensation Act</i> 	<ul style="list-style-type: none"> • the <i>Employment Equity Act</i> • the <i>Canadian Human Rights Act</i> • the <i>Canada Labour Code</i> • the <i>Public Service Staff Relations Act</i> • the <i>Employment Insurance Act</i>

For each of the following situations, indicate the legislation that would apply.

- a. Jason is offered a job flipping hamburgers for \$4.50 an hour.
- b. Diane's male co-workers keep telling her sexual jokes because they know it upsets her.
- c. Murray is told by the foreman to do a dangerous job he doesn't feel he's been adequately trained to do.
- d. Lorette is injured on the job when a forklift backs into her.
- e. Pavel, who works for a Crown corporation, misses a chance at a promotion because an equally qualified woman also applied.
- f. Marco, an employee of the federal government, goes on strike.
- g. Francine is turned down for a job because her employer feels it's "men's work."
- h. Marlene is laid off and needs financial help until she lands another job.
- i. Hugh, who works for the federal government, is allowed a day off with full pay on statutory holidays.
- j. Tom, who works for the Alberta government, doesn't have the right to go on strike.
- k. Francine, who's worked for her employer for two years, is told she's been laid off and that today is her last day of work.
- l. Though Karl is a clerical worker and Marie works in a warehouse, their paycheques are almost equal because their employer, the Government of Canada, deems their work to be of equal value.
- m. Rhonda wants to take an unpaid leave of absence from work when her baby is born.



Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Assignment

Now open Assignment Booklet A, turn to the Section 2 Assignment,
and answer question 5.

Suggested Answers

1. According to your textbook, the *Canada Labour Code* is a cutting-edge statute—a model for employment legislation that promotes equality and protects workers from discrimination.
2. This is an issue that sparks a good deal of controversy. No one likes having their lives disrupted by strikes, but most people agree that unions need the right to strike if they're to be able to negotiate reasonable employment contracts. Some services, deemed to be essential, however, are so crucial that employees are denied the right to strike. The question then becomes, which services fall into this category. Another question is how workers who are not permitted to strike can negotiate fair employment contracts.

Whichever side you took, were you able to support it with sound arguments? Be sure not to let your emotions cloud your reasons in responding to questions like these. Always try to order your ideas logically and to back them up.
3. This is obviously another question in which answers will vary. The important thing isn't what position you took but how well you argued it.
4.
 - a. No, Ms. Carmichael isn't making the right decision. She is legally required to correctly store and label hazardous substances.
 - b. Yes, Jordan is doing the correct thing. He has a right—in fact a legal obligation—not to perform any job that he reasonably believes poses a danger to himself.
 - c. No, Ms. Carmichael has no legal right to do this. Jordan was acting within his legal rights.
 - d. Here Ms. Carmichael is doing the correct thing. She's getting a more experienced worker to do the job, and she's told him of Jordan's refusal.
 - e. Here Ms. Carmichael has outsmarted herself. In not telling Caleb about the other workers' refusals, she's breaking the law.
5.
 - a. Answers will vary. Were you able to explain your thinking?
 - b. This is really an unfair question because you haven't been given the criterion to judge situations of this sort. However, if you were able to research the *Adult Interdependent Relationships Act*, you will probably have discovered that if a cohabiting couple live in a situation of mutual interdependence for three years or more, they qualify in Alberta for the status of Adult Interdependent Partners. So yes, it seems very likely that Michelle will be entitled to Workers' Compensation.
 - c. Michelle will receive the amount that Parker would have received had he been totally disabled, which is 90 percent of his earnings. Therefore, Michelle should receive \$900 a week in compensation for Parker's death.
6.
 - a. the *Employment Standards Code*
 - b. the *Human Rights, Citizenship and Multiculturalism Act*
 - c. the *Occupational Health and Safety Act*
 - d. the *Workers' Compensation Act*
 - e. the *Employment Equity Act*
 - f. the *Public Service Staff Relations Act*

- g.** the *Human Rights, Citizenship and Multiculturalism Act*
- h.** the *Employment Insurance Act*
- i.** the *Canada Labour Code*
- j.** the *Labour Relations Code*
- k.** the *Employment Standards Code*
- l.** the *Canadian Human Rights Act*
- m.** the *Employment Standards Code*

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Section 2 Conclusion



That wraps up your look at The Workplace and the Law. In this section you've covered a good deal of material. You've now had a solid grounding in employment contracts, employment standards in Alberta, and the issue of equality in the workplace for female employees. In the process, you've been introduced to a variety of legislation, both federal and provincial, designed to protect the rights of both employees and employers.

But there's a big area of labour law that you still haven't touched upon—and one no introduction to the topic would be complete without mentioning. That area is the role of unions and collective bargaining. This is the topic you'll be looking into in Section 3.

SECTION 3

Collective Bargaining and Challenging Issues



Does anyone in your family work for a company where union dues are deducted from employees' paycheques? If so, do you understand the rights your family member has as a union employee? Do you know what benefits this person is entitled to or what his or her collective agreement (the union contract) says about things like sick, bereavement, and adoption leave? Do you think this family member is aware of things like the company pension fund and grievance (complaint) procedures?

In this section you'll be learning about what it means to be a unionized employee. When you've finished the section, you should be able to identify different types of unions, to explain the benefits of a collective agreement, and to describe what happens when a conflict occurs between a union and management over things like wages and working conditions. You should also be able to explain procedures like mediation, arbitration, strikes, and lockouts. Finally, to finish up this section, you'll be looking into issues that are currently challenging lawmakers in the area of labour law. You'll be researching one such issue on your own.

Lesson 1: What Is a Union?



Chances are that you've learned in social studies courses about the dreadful working conditions the labouring classes put up with during the period often called the Industrial Revolution. Back then there were very few laws in place to protect workers; people needing jobs often had to work in dangerous, filthy conditions doing backbreaking jobs for many hours of virtually every day—and they often had to keep it up until they simply couldn't go on because they didn't earn enough to save for retirement and there weren't any pension plans. When labourers got too old to work, they usually became dependant on their children, the church, or charity.



But why would people put up with that? Why not refuse to work unless conditions improved?

Because there were so many people desperate for work, everyone knew that if one person refused to do a job someone else would take it. There was no incentive for business owners to spend money to make their mills and factories safe or to improve conditions or hours; if a worker died or was injured, he or she could simply be replaced.

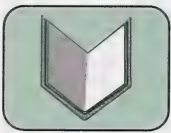


union: an organization of workers that negotiates with their employer(s) and that represents the workers in employee/employer negotiations

Over time this situation changed. One of the reasons this happened was the growth of **unions**, which enabled workers to bargain collectively, rather than individually, for better working conditions. Basically, a union is simply an organization that represents all the workers who belong to it. The principle is simple: strength in numbers. An employer negotiating an employment contract for all or most of the workers in a company is under a great deal more pressure to meet at least some of the workers' demands than would be the case if the workers were bargaining individually.

Of course there was a great deal of resistance to the development of collective bargaining on the part of employers and other elements of established society. In the nineteenth century, organized labour was met with the charge of "criminal conspiracy" in the courts. Judges believed that the combined action of working people was bad for the economy. This was because united workers could withhold the one thing that society needed from them—their labour.

Going Further



To learn more about the early struggle of unions to be accepted and respected as a positive force in society, turn to page 587 of your textbook and read "Looking Back: The Long Road to Collective Bargaining," ending at the top of page 588.



1. Today, not everyone is happy with unions. Sometimes, especially if you read or watch the news regularly, it seems that unionized workers are always going on strike and disrupting people's lives. It's possible that you've been directly affected by a strike—perhaps a teachers' strike—or the threat of one.



Before continuing, take a few minutes to write down your own feelings about unions and their right to strike. For example, do you think unions are essentially a good thing, or are they too powerful and disruptive a force? If you can, back up your ideas with clearly expressed reasons. If you're working with a friend, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

Whether or not you're always in favour of unions and their activities, it's important to recognize that the development of collective bargaining has helped enormously in giving working people in our society a decent standard of living and basic human dignity. Over the years, unions have also developed political power—often supporting parties that promise to pass laws to help working people. The result has been legislation that helps all workers—not just those in unions. Here are a few of the achievements for which the union movement can take much of the credit:

- basic employment standards (like those in Alberta's *Employment Standards Code*)
- human rights legislation
- medicare
- social security and pension plans
- Workers' Compensation
- employment insurance

How Unions Are Formed

Types of Unions

There are three types of unions:

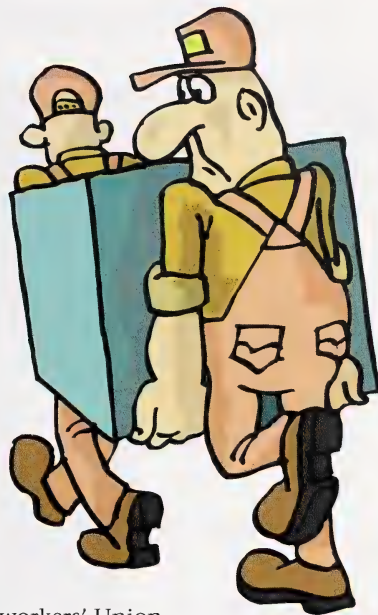
company union:
a union whose members all work for the same company regardless of their jobs

horizontal union:
a union whose members work in the same trade but for different employers

vertical union:
a union whose members have different sorts of jobs and work for different employers but who all work in the same industry

- company unions
- horizontal unions
- vertical unions

The differences are easy to understand. A company union is made up of people who all work for the same company regardless of their occupations. Secretaries, truckers, and computer technicians can all belong to the same company union if they all work for the same employer. A horizontal union has members who all do the same sort of work but for different employers. An example is the Alberta Teachers' Association (A.T.A.). Finally, the members of a vertical union work in different trades and for different employers but within the same industry. An example of a vertical union is the Canadian Autoworkers' Union.



2. Tell whether each of the following is a company, horizontal, or vertical union.

- All the widget makers in Canada, no matter who employs them, belong to the United Widget-Makers Union.
- The WonderGizmo Company's employees all belong to one union.
- The United Gadget Makers and Thingamajig Fabricators of Canada has members from across the industry, no matter who they work for or what they do.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



Union Certification



In Alberta, the statute governing the formation of unions is the *Labour Relations Code*. It specifies the kinds of occupations that can unionize. The Labour Relations Board, established by this statute, controls the formation of unions and regulates their operation. All unions must be certified by this board. For a union to be granted *certification*, it must be able to prove that a majority of the workers it will be representing want that union to be their bargaining agent. Sometimes employers object to their workers' becoming unionized, but they aren't legally allowed to prevent them from doing so. This means they can't intimidate employees or refuse to hire union members.

3. a. Why might employers object to their workers forming a union?
- b. Though employers can't legally prevent their workers from forming unions, they sometimes try to stop the process through other means. Suggest a few things employers might do to prevent the formation of unions.

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.



To learn more about the role of unions and how they can become certified, open your textbook to page 587 and read section "19.4: Unions" up to, but not including, the heading "Union Membership in the Workplace" on page 589. Then answer the following questions.

4. a. Explain the terms *collective bargaining* and *collective agreement*.
b. Identify ways in which collective bargaining has helped working people.
5. Explain the difference between a union forming from inside a business and one forming from the outside.

6. A union must be certified if it is to legally represent its members. Explain what is involved in gaining certification.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

Union Locals

local: a branch of
a union

When vertical and horizontal unions are formed, **locals** are usually created within the union. Locals are small groups within a big union representing the people in one location or people who do the same sort of work. Often, when it comes to bargaining with employers, there will be one large collective agreement reached between the employer(s) and the whole union, and smaller agreements reached between the individual locals and the employer(s). Wage settlements are often reached at the local level.

Here's how a new union local is usually formed in a pre-existing larger union (a horizontal union):

- A group of workers is identified at a workplace or as part of a trade, company, and so on.
- A committee is formed to establish a local. Things are often done rather secretly at this stage to prevent management from intimidating workers or offering token perks to head off the organization of its workers.
- The committee contacts the established union the group wants to join. (It's very unusual these days that a brand new union is started up from scratch.)
- One or more members of the committee approach each worker (usually secretly) to ask them to sign union cards and to pay a small fee.
- The union applies to the Labour Relations Board for certification as the bargaining agent for the group of workers.
- The Labour Relations Board orders a vote among the workers involved if less than a certain percentage (normally 60 percent) of eligible employees have signed up for the union.
- If a majority of employees vote for the union, the local is established. The law requires the employer to negotiate with the union now representing its employees and to "bargain in good faith" (an expression you'll be hearing more about shortly).
- The local is given a local number as part of the larger union it belongs to.

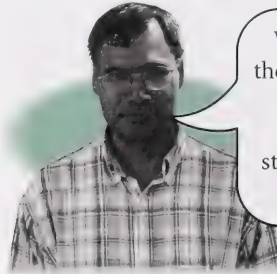


Union Membership

Members of unions pay dues. These dues pay for things like the salaries of union officials and various union publications. They also contribute toward strike funds—pools of money that are drawn upon to pay workers who are on strike or who have been locked out by their employers.

strike pay:

payments made by a union to its striking members to replace, in part, their lost wages or salaries



When members of a union go on strike, they don't get their regular wages. You can't expect an employer to go on paying salaries to workers who aren't working. What happens is that strike pay is given by the union to its striking members, and that pay comes from strike funds. You'll be learning more about strikes shortly.

closed shop: a business in which all employees have to belong to the union

open shop: a business where workers may or may not belong to a union and where non-members don't pay dues

union shop: a business in which workers must join the union by a specified time after starting work

agency shop: a business in which workers can opt out of the union but must still pay dues

shop steward: a person elected by a local as the members' representative



There are different kinds of union membership. If all the employees of a business are required to belong to the union, this is called a **closed shop**. An example would be teachers in Alberta, all of whom must belong to the Alberta Teachers' Association. By contrast, an **open shop** exists where employees don't have to belong to the union. Part-time and seasonal workers—or students doing work experience—are examples of workers who are often exempted from membership.

A **union shop** allows employers to hire non-union workers on the understanding that they join up within a certain period of time; examples here might be stores like Safeway and the Co-op. An **agency shop** allows non-union workers, but they have to pay union dues—or in some cases donate the same amount of money to charity. These workers, of course, will negotiate their own contracts with their employer under the rules and regulations you've looked at in the preceding sections of this course.

Most union members aren't expected to do much more than pay their dues, vote, and obey the rules. Most union activities are carried out by an executive (a small group of people who carry out administrative and managerial duties) that the members elect. Normally, locals all elect **shop stewards** to represent them and to take any concern to the executive. All members, however, are given the following rights by the *Labour Relations Code*:

- to be a member of a union
- to not be discriminated against as a result of union membership
- to receive equal treatment with respect to union membership without discrimination based on such things as race, ancestry, colour, religion, gender, age, and disabilities
- to not be expelled from the union or otherwise penalized for refusal to take part in an illegal strike (more about this later)

To learn more about what's involved in union membership, turn to pages 589 to 590 of your textbook and read the material under the heading "Union Membership in the Workplace." Then answer the following questions.

7. Make a chart like the one that follows, and in the right-hand column fill in the type of “shops” as described in the left-hand column.

At the ABC Company, employees can opt out of the union but not out of union dues.	
At the DEF Company, employees are free to join the union or not.	
At the GHI Company, employees must belong to the union.	
At the JKL Company, new employees must join the union by a set time.	

8. a. What is the main responsibility of a union’s executive?
- b. Identify **one** role unions play other than negotiating collective contracts.
- c. Describe the process a union member should follow if he or she has a job-related complaint and wishes to file a **grievance**.

grievance: a formal complaint made by a union, an employee, or an employer if it is thought that the collective agreement has been broken

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

This lesson has given you an introduction to unions and collective bargaining. But how does the process of collective bargaining work? That’s what you’ll be investigating in the next lesson.

Going Further

A good way to get a feel for the sort of activities unions involve themselves in is to visit the websites of one or two unions and to spend some time looking around. You’ll likely find such things as news items, publications, updates on contract negotiations, organizational charts, schedules of events, union initiatives, job postings, and details on courses. It doesn’t matter which unions you pick, but here are two sites to get you started:

- Alberta Union of Provincial Employees
<http://www.aupe.org>
- Canadian Labour Congress
<http://canadianlabour.ca/index.php>



Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer question 1.

Suggested Answers

1. People's attitudes and ideas will vary. Today many people who don't belong to a union often directly encounter union activity only when there's something like a strike going on that disrupts their lives. Some people, naturally, end up resenting unions. It's important to remember, though, that the strike is a union's only real weapon and that this weapon has given working people in our society, whether they themselves belong to a union or not, a decent standard of living and some control over their own lives.

Still, the argument can sometimes be made that unions today have grown too big and powerful—that they've become almost as much of a problem as the forces they were created to combat. Whichever side you took, were you able to back up your ideas with arguments and reasons?

2.
 - a. This is a horizontal union.
 - b. This is a company union.
 - c. This is a vertical union.
3.
 - a. Employers find it much easier to negotiate employment conditions favourable to themselves when dealing with individuals than when dealing with unions. A union can speak for many employees, and it has the ability to cause major disruptions in an employer's business. All this means that some employers resent unions and would like to keep them out of their businesses.
 - b. Answers will vary. Employers can, of course, use illegal intimidation tactics and then threaten reprisals against anyone who complains about them. Employers can also offer perks and bonuses to workers who don't join unions. As well, they can sometimes simply shut down plants where workers have unionized, claiming, perhaps, that they were no longer productive.

Did you think of other possible tactics?

4.
 - a. The term *collective bargaining* refers to the process whereby a union negotiates on behalf of its members with their employers on matters such as wages, hours, and working conditions. The term *collective agreement* refers to the contract between a union and an employer, arrived at by way of the collective bargaining process.
 - b. Collective bargaining usually results in better contract terms for workers than they could ever negotiate alone and better than those provided by statutes like Alberta's *Employment Standards Code*. Things like wages, safety, job security, and benefits (like insurance and pensions) are all improved for workers through the collective bargaining process.
5. When a union forms from inside a business, the workers in the business get together and decide to form a union (or, more likely, to approach an already existing union and ask to join it). When a union forms from the outside, an existing union will approach the workers and try to convince them to join it.
6. A union must apply to a labour relations board to be officially certified and, hence, legally able to represent its members. Only if it has the support of the majority of employees—usually 55 percent—will a union be certified. Support can be proven by signed membership cards or a vote (or both).

7.

At the ABC Company, employees can opt out of the union but not out of union dues.	agency shop
At the DEF Company, employees are free to join the union or not.	open shop
At the GHI Company, employees must belong to the union.	closed shop
At the JKL Company, new employees must join the union by a set time.	union shop

8. a. The chief responsibility of a union's executive is to prepare the position of the union for the collective-bargaining process. This means finding out from members what they'd like changed in their next contract—for example, better wages, more flexible hours, or improved working conditions.
- b. The role mentioned in the textbook is developing programs to help members grow professionally and personally. For example, unions might set up courses, workshops, and conferences. Or they might provide scholarships and bursaries for members (and their families) to use in pursuing their educational goals.
- c. First, the employee takes his or her concern to a shop steward who, in turn, passes it on to the union executive. The executive then examines the complaint, and, if it thinks it has merit, an official grievance is filed with the employer. An investigation and discussions follow, during which the union has a duty to "fairly represent" the employee, much as a lawyer would represent a client in court. If a settlement can be reached, the process stops here; but if not, the union can take the process through to arbitration, where a decision, based on the collective agreement, is made by an impartial party.

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Lesson 2: The Collective Bargaining Process



collective bargaining: negotiations between an employer and a union over things like wages, working conditions, hours, and benefits

You've been reading the expression **collective bargaining** throughout this course; now it's time to learn a bit about how the process actually works.

Put simply, a collective agreement is a contract between the union and the management of a particular company. The agreement is dated and signed by a union representative on behalf of the membership, a management representative on behalf of the company, and witnesses. However, this agreement must be approved by a majority of the workers represented by the union before it comes into force. A collective agreement is usually for a specific term—often one year, two years, or three years. Before the term has expired, negotiations have usually begun for the next contract.

strike: a stoppage of work organized by a union in an attempt to have its contract demands met

Collective agreements normally contain clauses on things like wages, benefits (for example, health care, dental care, and a pension plan), vacations, hours of work, employee training, sick leave, maternity and adoption leave, grievance procedures, dismissal, benefits packages for retired employees, and working conditions. A collective agreement must contain a clause to the effect that there will be no **strikes** or **lockouts** while the agreement is in force. The agreement should also outline procedures for settling labour disputes. You'll be examining various methods of doing this shortly.

lockout: a refusal by an employer to allow employees on the work site in a labour dispute

Although the *Employment Standards Code*, as you've seen, guarantees minimum standards regarding such things as wages, vacation pay, and benefits, unions are generally able to negotiate much better conditions for their members. For example, an agreement will likely outline very precise procedures for dismissing an employee; employers who want to get rid of a worker must follow these procedures precisely, and the union will see to it that they do.



To learn more about the process of collective bargaining, open your textbook to page 590 and read the material under the heading "Collective Bargaining" (to the top of the next page). Then answer the following questions.

1. Briefly describe what goes on during the collective bargaining process.
2. During negotiations with an employer, when are union negotiators likely to take the employer's offer to the union members for a vote?
3.
 - a. The law requires that both sides working toward a collective agreement "bargain in good faith." Just what does this mean?
 - b. What can either side do during negotiations if it believes that the other side isn't bargaining in good faith?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

4. Following is a simplified illustration of a collective agreement. Read it over carefully; then answer the questions based on it.

A COLLECTIVE AGREEMENT

made this 3rd day of October of AD 2005 between Higginbotham Resources Ltd., herein called "The Company"

and

The Minesweepers' Federation of Employees, herein called "The Federation"

The Company and Federation agree as follows:

1. Term

The term shall be from 3 October 2005, to 2 October 2007.

2. Wages

Effective 3rd October, 2005

Years Experience	A	B	C
0	\$20 492	\$29 623	\$42 971
1	21 560	32 942	44 723
5	25 942	39 600	52 800
10	30 800	43 700	59 700
20	34 963	49 800	65 000

Categories A, B, and C are based on incentives, motivation, and ability to do extra work, leading to supervisory or managerial positions.

3. Benefits

The Company will pay all health-care premiums and dental-care premiums and contribute to the company pension plan for the employees.

4. Vacations

The employee will be granted two weeks' vacation with pay (per salary schedule) after the first year of employment; three weeks' vacation with pay (per salary schedule) after the fifth year of employment, and four weeks' vacation with pay (per salary schedule) after the tenth year of employment.

5. Sick Leave

The employee will be granted up to 15 days with pay (per salary schedule) of sick leave during the first year of employment. After the first year, the employee may accumulate 15 days per year up to a maximum of 100 days of sick leave. A medical certificate shall be required after the fifth consecutive day of sick leave.

6. Bereavement Leave

The employee will be granted up to five days with pay (per salary schedule) for the death of a "near relative." See the Company policy manual regarding the definition of a "near relative."

7. Grievance

Where an employee has a complaint, the employee can take it to the shop steward, who will then inform the union executive. All grievances must be presented in writing. If the grievance is not settled in 15 days, then an Arbitration Board shall be established. The Arbitration Board shall determine its own procedure and shall give each party involved an opportunity to present evidence to be heard. The Arbitration Board shall make a decision binding on both parties, but it shall not change any terms of this Agreement.

Signed, Sealed, and Delivered in the presence of

Higginbotham Resources Ltd. of the Province of Alberta

Per

J. R. Higginbotham

President

The Minesweepers' Federation of Employees

Jean Wong

President

Philip Mast

Witness

Lori Risston

Witness

- a. What is the term during which this agreement will be in force?
- b. Grievance procedures are an important part of any collective agreement. These procedures establish an orderly system for dealing with employer-employee conflicts that can occur while the agreement is in force. Describe the grievance procedures established by this collective agreement.
- c. What rest periods, if any, are provided for in this agreement?
- d. There is no mention of workers' age in this agreement. Suggest a reason for this.
- e. According to this agreement, how might an employee receive a salary increase?
- f. According to this agreement, must the company pay all the insurance premiums for its workers? Explain your answer.
- g. Will the *Employment Standards Code* still apply to the workers covered by this agreement? Explain your answer.

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

One of the most important provisions of the legislation governing collective bargaining (in Alberta, the *Labour Relations Code*) is the one allowing for the appointment of outside parties like mediators and arbitrators to resolve a dispute while bargaining is going on. It's procedures like these that you'll be looking at in the next lesson.

Suggested Answers

1. After notice has been given, the negotiating teams of the union and the employer are required to meet within a certain time frame. The union negotiators start things off by presenting the employer's negotiators with a list of items they'd like in the next collective agreement—things like a specified salary increase or shorter hours. The employer's team then studies the demands, discusses them with the union negotiators, and makes a counter offer. This process goes back and forth; meanwhile, the union executive is kept up-to-date and helps direct the negotiating team.

Eventually, if the union executive thinks it has a reasonable offer from the employer, it presents it to the entire membership for a vote to accept or reject it. Eventually, if negotiations are successful, the membership will accept an offer. If not, further steps, which you'll be looking at soon, will follow.

2. Union negotiators will normally take an offer to the members for a vote in two situations:
 - when they think there's a chance that the members will accept it
 - when the employer says that an offer the negotiators don't like is final and the negotiators want to prove that the union members will solidly reject it

3. **a.** To “bargain in good faith” means genuinely working to reach an agreement. It involves keeping everything out in the open, not hiding information, and not refusing to discuss matters the other side wants to negotiate. Negotiators bargaining in good faith actively try to seek a solution to any problems that arise; they don’t just try to make things difficult in order to bring about arbitration or a strike.
- b.** If either side believes the other isn’t bargaining in good faith, it can ask the Labour Relations Board to look into the situation and to rule on it. The board can impose penalties on any side that it feels isn’t bargaining in good faith.
4. **a.** The term of the agreement is from October 3, 2005 to October 2, 2007.
- b.** An employee with a complaint explains it to the shop steward, who, in turn, takes it to the union executive (the people controlling the day-to-day workings of the union). Everything must be in writing. If the executive can’t resolve the issue with the employer within 15 days, an Arbitration Board will be set up to hear both sides of the issue and make a binding decision.
- c.** There is no clause regarding rest periods. This means the provisions in the *Employment Standards Code* are in effect.
- d.** Most unions require employees to be of legal age (the age of majority—18 years in Alberta).
- e.** Salary is based on these factors:
- years of experience
 - incentives
 - motivation
 - ability to do extra work
- f.** The company will pay health-care and dental-care insurance premiums. There is no mention of premiums for life insurance or of long-term disability insurance being paid by the company.
- g.** The clauses in the collective agreement take precedence over similar clauses in the *Employment Standards Code*. Where nothing is mentioned in the collective agreement, the *Code* still has effect.

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Lesson 3: Mediation, Arbitration, and Strikes



How often have you found yourself having an argument with someone where neither side was willing to back down? Normally, people are able to work out their differences through discussion and compromise, but from time to time situations arise in which no easy solution is available. When you were younger and were arguing with a sibling or a friend over who got to play with a toy or whose turn it was on the swing, it's likely that an adult often intervened and imposed a decision you both had to live with. This sometimes happens in union/company negotiations as well; from time to time it's necessary to bring in a third party.

When negotiations between a union and an employer seem to have reached a stalemate, the first thing that's usually done in an attempt to solve the problem is to have a **conciliation** officer appointed. This is normally an official from the government's labour department who meets with the negotiators of both sides and who tries to help them work out their problems. Conciliators can make suggestions or just encourage the two sides to keep negotiating; they can't, however, force either side to accept an agreement it doesn't like.

If conciliation fails to solve the problem, the next step is usually **mediation**. Like a conciliation officer, a mediator is a third party appointed to help the two sides come to an understanding. Unlike conciliators, however, mediators are normally not government officials; they're simply neutral third parties who are acceptable to both sides in the negotiations and who have experience in labour negotiations. Like conciliators, mediators can't force a settlement on the union and the employer; all they can do is work to help find solutions to the roadblocks in the bargaining process.

conciliation: a process whereby an outside party tries to help employer and union negotiators reach an agreement

mediation: a process like conciliation that involves the appointment of a neutral third party to help resolve difficulties in labour negotiations

arbitration: a process whereby a third party is given the power to resolve a labour dispute by imposing a settlement on the two negotiating sides

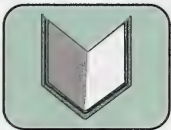
essential services: certain areas of employment considered so important that workers in them are denied the right to strike

If conciliation and mediation fail, **arbitration** can be the next step in the process of coming to a collective agreement. Unlike mediators and conciliators, arbitrators can force the union and the employer to accept a settlement. Sometimes both sides voluntarily agree to allow an arbitrator to be appointed and to abide by whatever decision he or she makes. This doesn't happen too often, however. Arbitration occurs more frequently in situations where the union doesn't have the right to strike (as in the case of **essential services**) and something has to be done to resolve a deadlock in negotiations. In such situations, the government usually has the right to appoint an arbitrator and to force the two sides to agree to that person's decision. The government can also appoint an arbitrator (or an arbitration board made up of several people) when it legislates strikers back to work—something you'll be looking at shortly.



1. Suggest a reason why negotiators for unions and employers don't often agree to the appointment of an arbitrator if they don't have to.

Turn to the Suggested Answers at the end of this lesson and compare your answer with the one given there.



To learn a bit more about mediation and arbitration, open your textbook to page 591 and read the material under the subheading "Mediation and Arbitration." As well, examine the chart that follows; it summarizes some of the essential differences between the various stages of coming to a collective agreement.

	Negotiation	Conciliation and Mediation	Arbitration
How It Happens	<ul style="list-style-type: none"> • by agreement • by contract 	<ul style="list-style-type: none"> • by agreement • by contract • by legislation 	<ul style="list-style-type: none"> • by agreement • by contract • by legislation
Parties Involved	two sides communicate and arrive at mutually agreeable decisions	<ul style="list-style-type: none"> • neutral third party acts as facilitator • two sides arrive at mutually agreeable decisions 	neutral third party acts as decision-maker
How the Process Works	two sides determine the process	neutral third party takes two sides through stages: <ul style="list-style-type: none"> • opening statements 	neutral third party receives statement of issues from both sides and takes the two sides through stages:

		<ul style="list-style-type: none"> • defining the issues • developing understanding of the issues • developing solution 	<ul style="list-style-type: none"> • opening statements • evidence • examination-in-chief (questions and answers) • cross-examination • summation with decision
The Result	contract that is final and binding	agreement to which parties are morally committed—likely to lead to a contract that is final and binding	arbitrator's decision that is final and binding

2. Your textbook tells you that mediators' recommendations are often made public. Why is this so?
3. Why is the expression *binding arbitration* often used to describe an arbitrator's role?

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Going Further

To learn a bit more about the processes of negotiation, mediation, and arbitration, turn to pages 32 and 33 of your textbook and read the issue "Mediation: Can It Replace the Courts?" Then turn to pages 328 to 330 and read the material in section "11.6: 'Alternative Dispute Resolution.'"



These discussions aren't focused on labour disputes in particular, but methods of alternative-dispute resolution like negotiation, mediation, and arbitration have many other applications. As the courts become busier and busier, alternative means of resolving disputes are becoming ever more important.

Strikes

wildcat strike: an illegal strike



It frequently happens, of course, that, despite the efforts of conciliators and mediators, the two sides in a labour negotiation simply can't reach an agreement. Rather than agree to binding arbitration, which really takes the whole process out of the control of the two parties concerned, a union will more likely use—or threaten to use—its ultimate weapon—the strike.

Strikes can be classified into two types—legal strikes and **wildcat strikes**. A legal strike can take place only when a union is in a legal position to strike; this means that proper procedures have to be followed and negotiations must have broken down. Wildcat strikes, by contrast, occur when workers simply get fed up and walk off the job. In this sort of situation, the courts can order the workers back to their jobs. The workers can also be fired for having broken the terms of their collective agreement.

The first step in declaring a legal strike is for the union to have a secret-ballot vote amongst its members. A majority must be in favour of a strike if one is to take place. When this happens, the union must commence the strike within 120 days after the vote. The union is also required to give the employer 72 hours' written notice before striking. If a mediator has been appointed, no strike can be held until his or her report is handed in. If everything is in order, the union is in a legal position to strike. When the strike begins, the first thing that usually happens is that **picket lines** are established around the workplace.

picket line: a demonstration by striking workers in which the workers block access to the employer's place of business

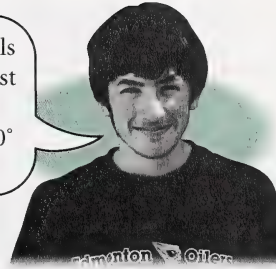
I've never really understood that. I mean, what's the point of picket lines? Why don't the workers just go home and refuse to work?



Several reasons. One is that the picket lines make the strike visible to the public. Another is that they discourage people from working for, or doing business with, the employer. Some people stay away because they sympathize with the strikers, others because they don't feel comfortable crossing the line. A third reason is that strikers are still legally employed, and they don't want to be perceived as lazy and just wanting time off. If they're out picketing, it shows that they're at the workplace and ready to work if an acceptable offer comes through.



Yeah, picketing outside in an Alberta winter tells everyone that the company's contract offer must be really terrible. I'd rather be at my job and getting paid for it than marching around at -30° and living on strike pay.



To learn more about strikes, turn to pages 592 and 593 of your textbook and read the material under the headings "Strikes" and "Lockout." Then answer the following questions.

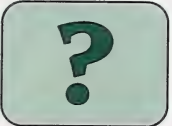
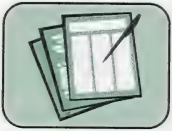
4. What is a *sympathy strike*?
5. Define the following terms and explain their role in strikes.
 - a. boycott
 - b. scab
6. Your textbook tells you that workers who don't support the union and who go to work during a strike are usually punished by the union. Some people see such workers as traitors who should stand by their fellow employees and join the strike. Others see them as heroic figures willing to brave angry picketers to go to work. What do you think? Should union members be free to work without punishment if they don't agree with a strike? Be sure to give reasons for your ideas.
7. We sometimes see scenes of violence at picket lines on the television news. Is this legal? Explain your answer.
8. Employees sometimes choose to *work to rule* rather than go on strike. For example, teachers might launch a work-to-rule campaign so that students' course work won't be affected. In your own words, explain what it means when employees work to rule.
9. The employer's weapon that corresponds with a union's ability to strike is the *lockout*. In your own words, explain what happens when workers are locked out by their employer.



Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

In Alberta, it's legal for an employer to hire replacement workers, often called *scabs* by union members, during a strike. The issue surrounding these workers is like that discussed in question 6; they're usually seen by union members as selfish, greedy people who are willing to break up a strike just to make a dollar for themselves. After all, if an employer can keep going with replacement workers, the strike may go on indefinitely while striking workers and their families suffer on their small amount of strike pay. For this reason replacement workers are also sometimes called *strike breakers*.

On the other hand, people who are themselves unemployed sometimes, understandably, see unions' demands as excessive. After all, their thinking goes, union members should be grateful just to have a job. When a union goes on strike for even higher wages, some unemployed people see this as a good chance to get a temporary job as a replacement worker—a job that might someday develop into something more permanent.



- 10.** What are your views? Should employers be allowed to hire replacement workers during a strike, or does this destroy the whole idea of a strike? Should replacement workers be criticized or praised for their willingness to take over union members' jobs during a strike? Express your ideas in a position paper of a page or two in length. If you're working with a friend, take sides and debate the issue.

Turn to the Suggested Answers at the end of this lesson
and read the helpful hints suggested there.

Have you ever followed a strike in the news and heard people calling for the government to legislate the strikers back to work? Sometimes when a strike is disrupting service to the public to such a degree that it's perceived to be causing a great deal of harm, the government will step in and pass a bill putting an end to the strike. This is called *legislating an end* to the strike. A strike by postal workers, for instance, can quickly put many small companies that depend on the mail right out of business (though with e-mail and courier services so easily available these days, this threat is no longer as great as it was not long ago). A strike that goes on for an extended period of time can cause so much damage that many people will call upon the government to put an end to it.

The problem here, though, is that legislating employees back to work takes away their only real weapon in their quest for higher wages or improved working conditions. For this reason, governments usually don't like to rush in with legislation until the two sides have a reasonable time to work out their differences on their own.



- 11.** Do you think governments should act quickly to end disruptive strikes and legislate strikers back to work, or should this be something done only very rarely (or not at all)? Give reasons for your answer.

Turn to the Suggested Answers at the end of this lesson
and compare your answer with the one given there.

12. The following article appeared in *The Edmonton Journal* in 1997. Though the content is now rather dated, it shows very nicely just how a real-life strike situation often progresses—or, for a time, fails to progress. Read the article and then answer the questions based on it.

Talks Stalled

Both sides cite the union's survey as the reason for delay in negotiations

ASHLEY GEDDES and HELEN PLISCHKE
Journal Staff Writers

EDMONTON — Contract talks between Canada Safeway and the union representing its striking Alberta workers likely won't resume until next week while the union surveys its members.

Both sides in the two-month-old dispute Tuesday cited the survey as a main reason for the talks being stalled further after negotiations broke off Saturday.

United Food and Commercial Workers president Doug O'Halloran said the union wants to survey its members on the picket line to find out where they stand on various issues in the negotiations.

"We want to survey our membership and see if the concerns they had at the beginning (of the strike-lockout) are still their concerns," said O'Halloran.

He said the survey would take several days, making it unlikely talks could resume before next week "unless a lightning bolt comes down."

Canada Safeway representative Toby Oswald said she understood some time was needed for the union to survey its members. She said the 10 days of mediated negotiations in Edmonton ended Saturday because bargaining teams were tired and "we had a couple of stumbling blocks that led to an impasse."

She added: "We've indicated to the unions we remain available. We're just waiting for a call."

Labour Minister Murray Smith said Tuesday that the government will not get involved with settling the strike unless both sides ask for binding arbitration. Neither party has done so, he added.

A government mediator has been involved in the negotiations twice, early in the strike and again about 10 days ago, Smith said.

"You always have concerns about length. But I think that that is up to those parties that are in the negotiations to determine when they want to cut off the length.

"The next step is clearly for the employer and the union to get together and decide what they want to do about this thing."

But optimistic talk about resuming negotiations didn't stop company and union executives from blaming each other for intransigence on key outstanding issues.

Presidents of three union locals called a news conference in Calgary Tuesday to denounce the company for using "bully tactics." They also announced a charge of bargaining "in bad faith" will be levied against the company before the Alberta Labour Relations Board.

At a separate news conference, company president Grant Hansen warned Safeway would be brought to the brink of financial disaster if the union got everything it's asking for.

"If we agree to what is being asked of us by this union, I'm afraid we will return to the edge of the cliff, and that is something that could be disastrous for us and certainly for our employees," said Hansen.

Safeway issued a detailed statement on where the company stands on various issues.

The company says it is willing to match any increase in top wage rates that the union negotiates with Safeway's chief competitor, the Real Canadian Superstore.

On the issue of increasing hours for part-time workers, the company says it's prepared to guarantee a minimum of 12 hours per week for part-time employees who now sometimes work as little as five hours per week.

But O'Halloran argued that on both wages and part-time hours the company has offered "no substance" in the talks. While offering 12 hours

minimum is "a good start" for part-time workers, there's too many loopholes in the wording of the "so-called" guarantee, he said.

The company's position generally in the talks hasn't changed since the start of the dispute March 26, while the union has been willing to compromise to reach a settlement, O'Halloran said.¹

- a. What two organizations are involved in this labour dispute?
- b. What has slowed down the talks?
- c. Is the Alberta government likely to legislate the workers back at this point? In your answer, explain just what the government has already done to move the negotiations along and what it is prepared to do.
- d. Presidents of three locals have accused the company of bargaining "in bad faith." What does this mean?
- e. According to the article, what are some of the issues keeping the two bargaining sides apart?

Turn to the Suggested Answers at the end of this lesson
and compare your answers with the ones given there.

In this lesson you've been given an overview of the processes of mediation, arbitration, and strikes that characterize the collective-bargaining process. Of course, the whole business is far more complex than this overview can describe, but you should now have an idea of what it means to bargain collectively and to exercise the right to strike. Perhaps now, when there's a strike affecting you or people you know, you'll have a somewhat better understanding of what's going on and why things are happening the way they are.

13. The very first question you answered in this section asked you your feelings about unions and their right to strike. Now that you've had a chance to think and learn about unions, it's time to return to this issue—perhaps from a more informed vantage point.

If you were an employee, would you want to belong to a union and have a collective agreement?

The chart that follows has spaces for both the advantages and disadvantages of collective bargaining from the points of view of employees and employers. Construct a similar chart and see how many ideas you can come up with.

¹ Ashley Geddes and Helen Plischke, "Talks Stalled," *The Edmonton Journal*, 32 May 1997, <<http://www.southam.com/edmontonjournal/archives/052397safeway.html>> (5 May 1998). Reprinted by permission of *The Edmonton Journal*.

	Advantages	Disadvantages
Employees		
Employers		

14. To finish up your work on unions in the last three lessons, test your mastery of terminology used by completing the crossword puzzle that follows. Try to do it without looking back, but be sure to review any terms that you have to look up.



Across

2. a union of workers in one industry but who have different jobs and work for different employers
5. a union of workers in one trade but working for different employers
6. a stoppage of work by a union to push for contract demands
8. a process much like conciliation
10. a union whose members work for one employer regardless of tasks
11. a _____ shop: a business where workers can opt out of the union but still must pay dues
15. a refusal by an employer to let workers onto the work site
16. a business where workers may or may not belong to the union and where non-members don't pay dues

Down

1. a complaint by someone who thinks the collective agreement has been broken
3. the official recognition of a union
4. a process whereby both negotiating parties are bound to a decision made by a third party
7. a person elected by a local as the members' representative
9. an organization of workers
12. a business where all employees must belong to the union
13. a branch of a union
14. a business where workers must join the union by a specified time

Turn to the Suggested Answers at the end of this lesson and compare your answers with the ones given there.

Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer questions 2, 3, 4, and 5.

Suggested Answers

1. An arbitrator is a third party with the power to decide the terms on which the two negotiating parties must agree. Naturally, it's unusual for either side to be willing to give up whatever control it has over the process and to leave its fate in the hands of another independent party.
 2. Making mediators' reports public puts pressure on the negotiating sides to resolve the issue quickly. The public doesn't think much of disruptive labour disputes that aren't being carried on for a good reason.
 3. An arbitrator has the power to bind both sides with his or her decision; hence the expression *binding arbitration*.
 4. A sympathy strike is a strike that occurs when workers in other unions, not actually involved in the labour dispute themselves, go on strike to support workers who are involved in the dispute. This shows solidarity among unionized workers and can add extra pressure on the employer to resolve the situation quickly.
 5.
 - a. A boycott is an organized attempt to pressure a business by encouraging the public not to buy its services or goods. Frequently, sympathetic members of the public support striking workers by boycotting the products of the workers' employer.
 - b. *Scab* is a derogatory term for someone who replaces a striking worker, thereby enabling the business to go on functioning.
 6. Answers will vary. Unionized workers who disagree with something the union is doing—like going on strike—find themselves in a difficult spot and with a moral dilemma that has to be resolved. Whichever side you took, were you able to support your views with clearly presented reasons?
 7. No, this is illegal. Picketers aren't permitted to use force, block roadways, or commit libel with their placards. Possible criminal charges that can be laid against picketers who become too aggressive are
 - intimidation
 - mischief
 - trespass
 - common assault
- Unions, it should be noted, will usually supply legal counsel (a lawyer) for members who are charged with criminal offences while on the picket line; however, such members, if found guilty by a court, will acquire a criminal record.
8. Sometimes a union will decide to work to rule rather than actually go on strike. When this happens, its members will do what's on their actual job descriptions and no more. Using the example of a teacher's strike, teachers who work to rule will stop doing extra-curricular things like coaching and travelling with sports teams, helping students after class, getting involved in fundraisers, meeting with parents after school, or conducting band concerts outside school hours.
 9. If an employer finds that negotiations have broken down, he or she can resort to a lockout (if the necessary legal procedures are all followed). This means refusing the employees entry onto the job site. Locked out employees don't earn money, so this puts a great deal of pressure on them to resolve the dispute. Lockouts aren't common because employers can't normally make any money from their businesses while their employees aren't on the job.

10. Answers will vary. This is a socially contentious issue that frequently crops up in strike situations. Were you able to defend your position with arguments and reasons?
11. Answers will vary. Governments don't like to interfere in labour negotiations. They normally do so only when the strike has gone on for quite some time, there's no end in reasonable sight, and there seems to be a great deal of harm being done to the public.
12. a. The organizations are Canada Safeway (the employer) and United Food and Commercial Workers (the union representing the employees).
- b. The talks have slowed down because the union negotiators want to survey the union members to get a better idea of just where they stand on a number of issues that have emerged during negotiations.
- c. The Alberta labour minister has said that the government won't get involved unless both sides ask for binding arbitration. This would seem to mean that the government doesn't see this strike as affecting the public so severely that it should step in to end it with legislation. The government has already supplied a mediator on two occasions during the strike, but that hasn't worked. If both sides do ask for an arbitrator, that will mean that they agree to be bound by whatever decision that person (or board) makes.
- d. Bargaining "in bad faith" means not really working toward resolving the matter, refusing to discuss certain issues, or hiding information.
- e. The article makes specific reference to two issues:
- wage increases for workers
 - increased hours for part-time workers
13. Charts will vary. Compare yours with the one that follows.

	Advantages	Disadvantages
Employees	<ul style="list-style-type: none"> • better wages • increased benefits (e.g., dental plan, sick leave, bereavement leave) • grievance procedure • pension plan 	<ul style="list-style-type: none"> • no changes to contract possible until it expires • possibility of being forced into an undesirable strike or locked out • employee not directly involved in bargaining • union dues • more "red tape"; less freedom for individual

Employers

- only one employment contract to negotiate
- grievance procedure
- satisfied employees
- right of lockout in a labour dispute
- locked into agreement
- must bargain with professional negotiators backed by union membership
- must follow grievance procedures
- increased benefits/higher wages
- chance of workers striking

14.

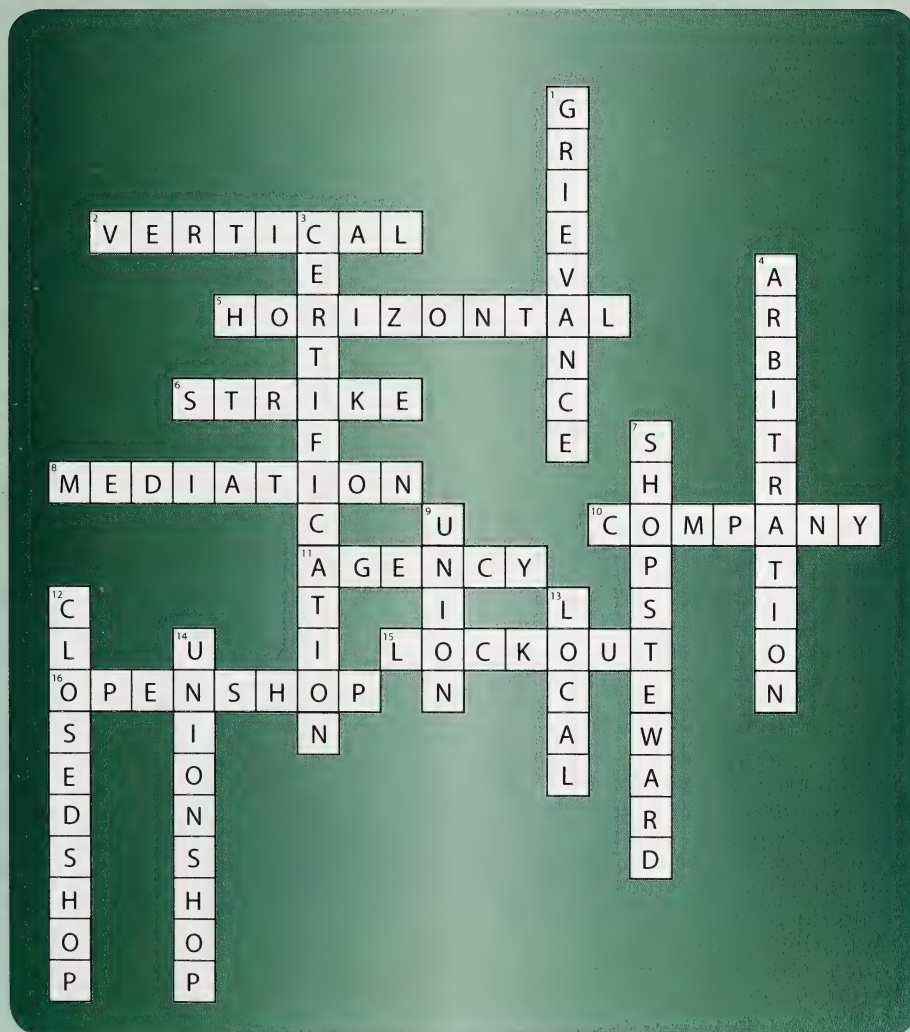


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Lesson 4: Challenging Issues in Labour Law



Do you think that employers should have the legal right to routinely test their employees to see if they're taking illegal drugs? Do you believe that employers should be able to force employees to retire at a certain age even if they're still very capable of doing their jobs? Do you think government workers in Alberta should have the right to strike? Do you believe in affirmative-action programs?

These are just a few issues in the area of labour law that are currently generating a good deal of public controversy and challenging lawmakers both in government and in the courts. In this lesson you're going to be looking very briefly at a number of such challenging issues. Then you'll be selecting one that interests you and doing some research into it on your own. The last assignment for this course will be to present your findings in a short report.



Don't let that thought intimidate you; if you work through this lesson carefully, you shouldn't have much trouble with the assignment. It might be a good idea right now, though, to turn to your Assignment Booklet and read the last question in the Section 3 Assignment so you'll have a clear idea of just what it is you'll be asked to do.

Most of this lesson will, then, involve a brief look at a few controversial areas to get you thinking about an issue you'd like to research. The lesson will finish up by giving you some direction as to how to go about doing your research. Bear in mind that the issues that follow are only a sampling; there may be another issue in the area of labour law that you'd like to research. That shouldn't present a problem, though you should get your teacher's permission before you go ahead and do your research.

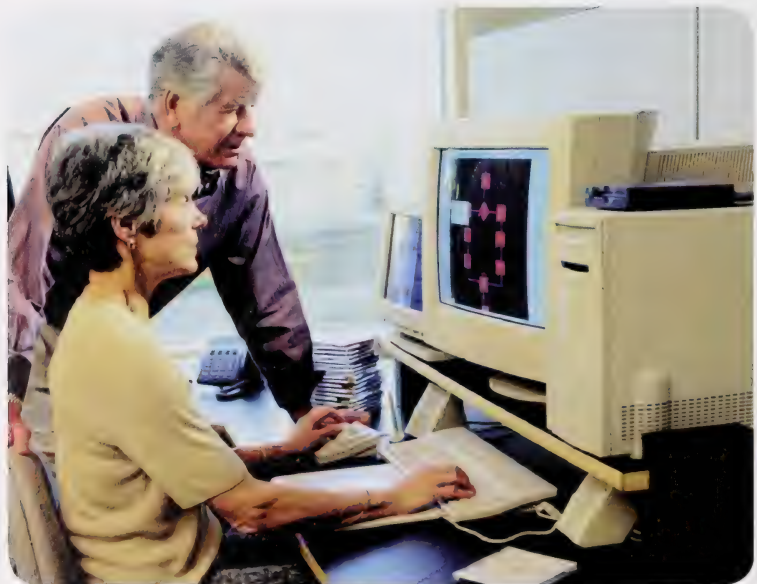
Drug and Alcohol Tests

As you've probably noticed, each chapter of your textbook has a section near the end (highlighted on beige-coloured paper) that looks at an issue in the area of law that chapter deals with. The "Issue" section in the chapter on labour law looks at the question of employers' right to test employees for the use of drugs and alcohol. On the one side, employers can argue that if they're paying someone to work for them, they should be able to take steps to see that these people are able to do their jobs properly and honestly; and this means that they avoid illegal drugs and don't abuse alcohol. On the other side, the argument is that such testing interferes with employees' basic freedoms. As long as they do their jobs adequately, the argument goes, employers have no right to pry into their private lives.

1. To learn more about this issue, open your textbook and read the material on pages 578 and 579. Then answer textbook questions 1, 2, and 4 on page 579. If you're working with a study partner or in a classroom situation, use question 3 as the basis for an informal debate.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

Mandatory Retirement Age



Another issue in the area of labour law that has been in the public eye in recent years is that of forced (or mandatory) retirement. An Alberta case brought this issue to the public's attention a few years back when the University of Alberta tried to force Olive Dickason, a highly respected professor, to retire. Their argument was a clause in the collective agreement governing professors that permitted forced retirement at age 65.

Professor Dickason, who was still very active in her field of study, fought back on the grounds that forced retirement contravened Alberta's *Individual's Rights Protection Act* (the statute that preceded the current *Human Rights, Citizenship and Multiculturalism Act*). Professor Dickason's argument was that she was being discriminated against illegally on the basis of her age.

This case went all the way to the Supreme Court of Canada, where it was decided that an employer does have the right to require employees of a certain age to retire and that human rights legislation doesn't protect employees from being forced out of their jobs.

Today, this issue of forced retirement still hasn't been resolved to everyone's satisfaction. Some provinces, led by Alberta, Manitoba, Quebec, and Prince Edward Island (and the three Canadian territories), have banned mandatory retirement policies, meaning that in those jurisdictions it's illegal for an employer to force employees to retire because of their age. Several other provinces are preparing to ban mandatory retirement in the near future.

As our society ages and people live longer, forcing active, experienced people out of the work force at a predetermined age is a policy that appears to have many drawbacks. It also seems to discriminate unfairly on the basis of age.

On the other hand, it's frequently useful for companies to be able to retire older, more expensive staff and provide opportunities for young, energetic newcomers. And shouldn't older workers, who have had decades to work and contribute, be expected to step aside at some point to allow younger people the opportunity to do the same? Meanwhile, the debate continues.

2. What are your thoughts on the issue of forced retirement? If possible, debate the issue formally or informally; otherwise, write up your point of view in a position paper of no more than one page.

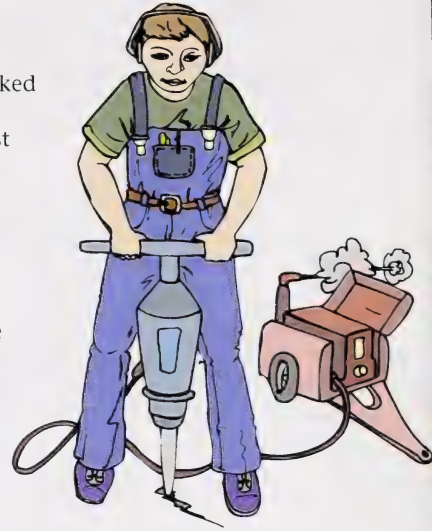


Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.



Sexual Harassment

Sexual harassment is an issue you've already looked at in this course. This has been a major area of controversy in the workplace throughout the last few decades. When women first began to make their voices heard about the amount of this type of harassment going on in the workplace, society and the legal system were quick to react. The public was shocked to discover just how pervasive sexual harassment on the job was, both the obvious *quid pro quo* type and the more insidious poisoned-work-environment variety. As you've seen, human rights legislation now protects employees of both genders from sexual harassment; but, ironically, some people are beginning to say things have moved too far. We're beginning to hear stories of offices where workers are afraid to share jokes, afraid to compliment colleagues on new clothes or hairdos, afraid to do or say very much at all for fear of a charge of sexual harassment. The sides seem split; some people think the laws must be upheld and even strengthened, while others feel they should be relaxed.



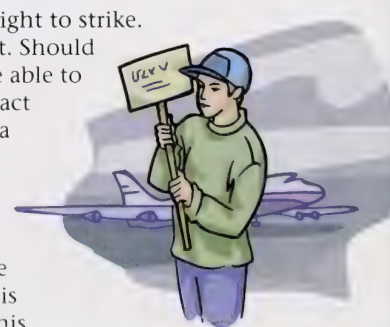
Affirmative Action and Pay Equity

Related to the issue of sexual harassment are gender-related affirmative action and pay equity issues. Again, these are topics you've already looked at in this course; you've seen how laws like the federal government's *Canadian Human Rights Act* and *Employment Equity Act* promote programs of this sort.

Many people, however, object on principle to artificial attempts to engineer the workplace to fit the ideals of those after total male/female equality. Gender-related affirmative-action programs, they say, discriminate against men—more specifically, they seem to discriminate against Caucasian men. And pay equity means comparing the value of very different types of work and arbitrarily deciding what jobs are of equal value and what jobs aren't. In contrast, those supporting such programs point out that the system has been skewed to favour Caucasian males and the types of jobs they do for so long that a bit of artificial engineering is needed to level the playing field.

The Right to Strike

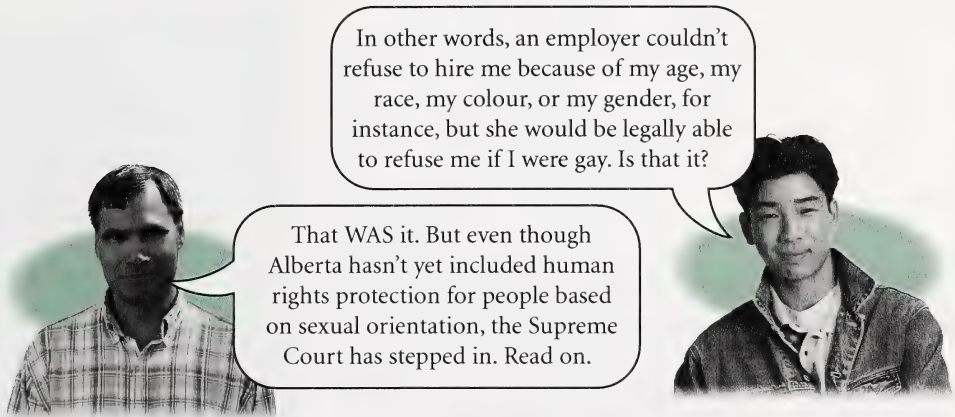
Another issue you've looked at in this course is the right to strike. In Alberta, government workers don't have this right. Should they? Should people performing essential services be able to legally abandon their jobs in order to get their contract demands? Some people even think that the strike is a negotiating weapon that's been abused and that our society is suffering as a result. Should laws be passed to curtail this right, or would that take away the only real weapon workers have? And what about replacement workers? In Alberta, companies can hire temporary employees to replace striking workers. This can destroy the best weapon workers have. Should this be allowed?



Rights for Homosexual Employees

An issue very much in the news in Alberta while this course was being developed was that of human rights protection for homosexuals. This issue goes well beyond the area of labour law, but it definitely has serious implications for the workplace.

The principal law that protects people from discrimination in Alberta is the *Human Rights, Citizenship and Multiculturalism Act*. This statute prevents discrimination against individuals on the basis of race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income and family status. The *Act* says nothing, however, about a person's sexual orientation.



In April 1998, the Supreme Court of Canada ruled on the case of Delwin Vriend, a young man who was fired from his teaching job at King's College in Edmonton because he was a homosexual. The court ruled that Alberta's human rights legislation must be interpreted to include protection for people based on their sexual orientation. This means that, even though sexual orientation isn't mentioned in Alberta's *Human Rights, Citizenship and Multiculturalism Act*, from now on Alberta's Human Rights and Citizenship Commission must investigate and rule on cases of alleged discrimination against homosexuals. And they must operate on the basis that protection is provided for discrimination based on sexual orientation.

This ruling raised quite an uproar in Alberta at the time. Part of the problem was the issue of whether a court, with appointed judges, should be able to overrule elected politicians in deciding on Alberta's laws. At the core of the debate, however, was the question also whether or not the human rights of homosexuals should be protected. On the one hand, it seems understandable that an employer like King's College, a Christian institution that stands opposed to homosexual (indeed, to any pre- or extra-marital sexual) activity, would view an openly homosexual instructor as a bad role-model and would therefore want the right to dismiss him from his job.

On the other hand, it's also understandable that a minority who suffer a tremendous amount of discrimination in our society should have laws that protect them from mistreatment at the hands of prejudiced people.



3. What are your initial thoughts on this issue? Should human rights protection be granted on the basis of people's sexual orientation? You may have strong religious views on this issue or you may come at it from a humanistic perspective. Either way, try to present your position clearly and logically and to back it up with reasons and arguments.

Turn to the Suggested Answers at the end of this lesson and read the helpful hints suggested there.

Employment Insurance

Another issue in the area of labour law surrounds employment insurance. Employment insurance was originally conceived as a system whereby workers paid premiums while working to create a pool of money to draw upon for short periods while they were unemployed. The idea was just to see workers over the short rough spots between jobs.

However, in seasonal industries, and in parts of the country where jobs are chronically scarce and largely seasonal, some people have come to see employment insurance as a regular source of income. This angers some other workers who feel that they're contributing each month to support people who don't—or won't—work steadily.

Even the fact that people who live in less prosperous areas have to work less time to qualify for employment insurance payments seems unfair to many Canadians. They'd like to see the laws toughened up to make the system once again what it was intended to be. This could include getting rid of payments to people who become sick or who have or who adopt children.

Another issue in the area of employment insurance is that many employers say that the payments they have to make to match those of their employees make it difficult for them to hire as many workers as they'd like to. In an era of high unemployment, some people now feel that if premiums (and payouts) were significantly reduced, a lot more jobs could be created, allowing many people now collecting EI to go back to work.



Other Issues

There are, of course, many other challenging issues in labour law. Here are a few:

- daycare in the workplace
- employment protection for domestic workers (maids and cleaning people, for instance)
- wrongful dismissal
- confidentiality of employees' records
- minimum wage laws
- the right of employees to access information
- protection for "whistle blowers"—employees who report dishonesty and corruption at higher levels

Your Assignment

Whether you pick one of the preceding issues or a different one, your final assignment will involve doing a bit of research and presenting your findings. What follows will help you get started with that process.

The first thing to do is to select an issue that interests you. Alternatively, you could pick two or three and do a little digging into each to discover which one you can find the most material on and/or which you would most enjoy learning about. Your Legal Studies teacher and/or your librarian should be able to give you some direction here.

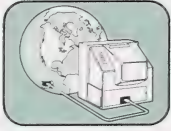


Your textbook and other current law texts may be able to help you get started, but it's not likely that they'll take you too far. If you have access to back issues of newspapers and newsmagazines like *Maclean's*, they should be a great help. The magazine *LawNow* would also be an excellent resource. American newsmagazines like *Time* and *Newsweek* should also prove to be valuable resources, since an optional part of your project will be to compare Albertan or Canadian laws with those of another jurisdiction.

Other sources you can use in your research include the Alberta Human Rights and Citizenship Commission and Alberta Human Resources and Employment. If you contact these organizations and explain the sort of information you're after, they may be able to send out useful information.



You can get contact information from their websites. The website addresses are as follows:



- Alberta Human Rights and Citizenship Commission:

<http://www.albertahumanrights.ab.ca/>

- Alberta Human Resources and Employment:

<http://www3.gov.ab.ca/hre/>

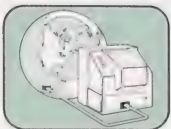
The most easily accessible source of information is the Internet. If you do use the Internet for your research, you may well find that you don't have to go any farther for all the information you need. One source of information on the Internet is stories in the archives of newspapers. Another source is websites devoted to legal matters. You could also try searching the CBC Archives at this address:

<http://www.cbc.ca>



Another thing you can do is simply use a good search engine to find material with a few key words. By entering key words like "mandatory retirement, Canada" into your favourite search engine, you may well uncover almost all the material you'll need.

Aside from a good search engine, here are a few additional website addresses that might be useful. Note that some of them will link you to other possible sites.



- **<http://www.acjnet.org/splash/default.aspx>**
- **<http://www.slsedmonton.com/civil/index.html>**
- **http://www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/ei.shtml**
- **<http://www3.gov.ab.ca/hre/index.asp>**
- **<http://www.wcb.ab.ca/home/>**
- **<http://www.albertahumanrights.ab.ca/>**

Of course, a wonderful way to get information is to talk with people who are knowledgeable in the area you're investigating. If you can arrange an interview with a lawyer or somebody else who works in the field of labour law—or who is simply knowledgeable about the issue you wish to investigate—by all means take advantage of it. For tips on conducting an interview, see the Going Further activity at the end of this lesson.



If you've looked at your research assignment (the last question in your Section 3 Assignment), you'll have noticed that in your report on a challenging issue, you're being asked to propose possible solutions or changes to the current legislation. A good way to get ideas for changes is to research the laws in other jurisdictions—either outside Alberta or outside Canada. The easiest country to research is probably the United States because of access to newsmagazines like *Time* and *Newsweek*. There's also a good deal of material on American laws and issues on the Internet and in day-to-day news coverage in the media.

Alternatively, you might want to look at the laws in other English-speaking countries like Australia and New Zealand if you can find information; these two countries have the advantage that their governmental and legal systems are much like Canada's. Note, however, that research into the laws in other jurisdictions is an optional part of your assignment. Proposing changes in our own labour laws, on the other hand, is required. When you finally write up your report for your assignment, it should include the following elements:

- a brief explanation of the issue
- a short discussion of the current law in Canada (or in Alberta)
- if possible, a look at the law in another jurisdiction (another province or another country)
- proposals for changes in current legislation that would help solve problems related to the issue being investigated

Don't be intimidated by this assignment. While the issues all become complex if you delve into them in real depth, that's not expected here. All you have to do is research a few basics and think about the issue you've chosen. Your report won't have to be long, but it should show that you've done both some research and some thinking about the issue you've selected.



Going Further



The fact that you're taking a Career and Technology Studies course in Legal Studies may indicate that you have some interest in pursuing a law-related career. If so, this might be a good time to dig around and learn a bit about careers in the area of labour law. Your textbook has very short profiles of law-related careers on pages 97, 119, 332, 411, and 596. These are arranged so as to be specific to certain areas of law, and only the discussions on pages 97 and 596 have profiles directly related to labour law. Still, they'll give you a place to start.

But that's just a beginning. Aside from these possible careers, there are many other jobs and professions related to labour law. A few of them are

- negotiator
- arbitrator
- mediator/conciliator
- employment counsellor
- employee of a government agency (for example, Workers' Compensation Board, Human Resource Centre, Labour Relations Board, Human Rights and Citizenship Commission, Alberta Labour)



If careers in areas like these—or in any other areas related to labour law—interest you, take some time now to investigate one or more of them. Your librarian, your Legal Studies teacher, or your guidance counsellor should be able to get you started in your research. And, of course, the Internet can be a great tool to use for a job like this. As you do your research, you might consider making up job-profile sheets and filling them in as you acquire information. Here's a sample of a typical job-profile sheet you could use (though you can adapt it as you see fit).

Job Profile	
Job Title	
Educational Requirements	
Skill and Appitude Requirements	
Functions/Responsibilities	
Employment/Advancement Opportunities	
Salary Range	
Benefits and Drawbacks	
Resources Used for Research and Future Reference	

With the help of your library and/or the Internet, you should be able to uncover quite a bit of information. Another source of information might be an employment agency. But the best way to get information is usually to speak with someone who's actually doing the job you're interested in. Once you've decided on a job you're going to investigate and learned a bit about it, you might consider trying to contact someone—in person or over the phone—who does that job and finding out first-hand just what the job involves. If you're studying in a classroom situation, your teacher should be able to help you arrange an interview. If you're a distance learning student, you may have to do more on your own.

Some students find it difficult to make contacts of this sort; but if you phone someone, politely identify yourself as a Legal Studies student, and explain the purpose of the interview, most people will be more than willing to give you a few minutes of their time—either over the phone or in person at a time you can arrange.

If you're uncomfortable with the idea of conducting an interview, the following pointers should help:

- Prepare beforehand. Have all the questions you want to ask written down in a logical order. Concentrate on questions that are specific to the job you're investigating.
- When you arrange the interview, try to find a time when your interviewee isn't usually very busy. You'll be able to get much better information if he or she isn't rushing to get back to work.
- If you're conducting the interview in person (rather than over the phone), be sure to dress appropriately.
- Keep your questions on a professional level. Asking questions that are too personal (such as how much money a person makes) may make the interviewee uncomfortable. You'll have to get this sort of information elsewhere.
- Listen carefully and make notes. If you wish to record the interview electronically, be sure to get permission first from your interviewee.
- Keep the interview down to a reasonable length of time—maybe ten minutes. Tell the interviewee how long the talk will last and be sure you stick to that time frame.
- Thank your interviewee when the discussion is over. Following up with a brief thank-you note a few days later is a very nice touch.

Of course you may not end up doing an interview; it's simply suggested as a good way to get information. But if you are thinking at all of labour law as a possible career area, you should consider doing a bit of research into it and discovering what you can about career possibilities in this area.

Assignment

Now open Assignment Booklet B, turn to the Section 3 Assignment, and answer question 6.

Suggested Answers

1. **Textbook question 1:** Answers will, of course, vary. Did you defend your ideas with clearly explained reasons? Schools that randomly test students maintain that doing so protects students by reducing the number of fights at dances. This argument puts the welfare of the student body as a whole ahead of the individual rights of students to do what they want. Those supporting the other side would take the opposite position—that the rights of the individual students in the school to privacy shouldn't be sacrificed to catch a few potential troublemakers who might—or might not—get into a fight.

Textbook question 2: One argument in favour of mandatory testing is that in some industries (such as the airline industry), such testing is necessary to protect customers' safety. And in other businesses, like banking, such testing can be defended on the grounds that addiction could lead to large-scale fraud and theft. On the other side, people argue that testing of this sort is demeaning and an invasion of privacy. They point out that this might be the thin edge of the wedge leading to greater and greater erosion of people's freedom.

Whichever position you defended, did you supply reasons and arguments?

Textbook question 4: Again, answers will vary. Did you defend your position with reasons?

2. Answers will vary. Did you defend your ideas with reasons and arguments? Do you think you might see the issue differently if you were older?
3. Answers will be personal. Were you able to put any emotional reaction aside and look at the problem objectively and rationally? Could you defend your ideas against arguments from the opposite point of view?

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Section 3 Conclusion



In this section you've learned about the different types of unions and what it means to be a union member. You've investigated what's involved in a collective agreement, and you've examined the process of collective bargaining. You've looked at processes like mediation, arbitration, going on strike, and locking workers out. Now that you've finished the section, you should have a good basic understanding of how being employed as a union member differs from being employed as a single individual. This information may be very useful to you later in life as a member of the work force and even someday, perhaps, as an employer.

LEGAL STUDIES 2020 SUMMARY



This wraps up your look at labour law. In this course you've looked at labour law from many different angles. You've examined different types of employment relationships along with the rights and duties they entail, you've investigated employment contracts, and you've studied Alberta's *Employment Standards Code* in some detail. You've also looked into the issue of human rights in the workplace, with an emphasis on concerns facing women in particular, and you've learned about unions and collective bargaining. Finally, you've looked at issues currently challenging lawmakers in the area of labour law, and you've researched one of these issues on your own.

It's important to remember that the law is constantly changing. Legislation is regularly updated, or even replaced, and new court decisions create new laws. If labour law interests you, it's important to keep up with changes of this sort. From now on, try to follow labour-law issues in the news and see what you can learn from them. Who knows? It just might develop into an interest that could lead to a career in some area of labour law.

CONGRATULATIONS

Congratulations on completing Legal Studies 2020! We hope you've enjoyed taking this course and that you've found it both interesting and rewarding. If you have, perhaps you'll consider taking another Legal Studies course in the future.



NOTES



APPENDIX



- Glossary
- Documents

Glossary

acceptance: the assent to a definite offer

affirmative-action programs: programs designed to increase the numbers of people from disadvantaged groups in occupations where traditionally those groups have been underrepresented

agency shop: a business in which workers can opt out of the union but must still pay dues

agent: a person hired to represent another party and to act on that party's behalf

age of majority: the age at which a person can undertake legal obligations (in Alberta, 18)

arbitration: a process whereby a third party is given the power to resolve a labour dispute by imposing a settlement on the two negotiating sides

bereavement: the death of a family member

breach: a failure to perform an obligation under a contract

capacity: the legal ability to enter into a valid contract

closed shop: a business in which all employees have to belong to the union

collective bargaining: negotiations between an employer and a union over things like wages, working conditions, hours, and benefits

common law: the body of law that gradually developed as judges in English courts made decisions in the cases they heard

company union: a union whose members all work for the same company regardless of their jobs

conciliation: a process whereby an outside party tries to help employer and union negotiators reach an agreement

consideration: something of value exchanged by the parties to a contract

constructive dismissal: the act of deliberately forcing an employee to resign through various forms of mistreatment

contract: a legally binding agreement between two or more parties

Crown corporation: a company through which the government carries on business activities

damages: money awarded by a court to compensate someone claiming to have been wrongfully injured by another

defendant: the party against whom a legal action is brought in civil court or the party charged in a criminal case

discrimination: the practice of treating some people differently from others because of prejudice toward a group to which they belong

essential services: certain areas of employment considered so important that workers in them are denied the right to strike

express contract: a contract in which the terms are specifically laid out

fraud: intentional deception designed to achieve some gain

fringe benefit: an employment benefit granted an employee over and above regular wages

garnishment: a process whereby a court dictates that a portion of a worker's wages be deducted to pay a court settlement

grievance: a formal complaint made by a union, an employee, or an employer if it is thought that the collective agreement has been broken

harassment: unwelcome behaviour toward another (who is often in a subordinate position)

horizontal union: a union whose members work in the same trade but for different employers

- human rights:** rights that protect people from discrimination from others in certain areas of life
- implied contract:** a contract that is suggested by the actions of the parties
- independent contractor:** a person who contracts with another party to do a specific task without direction from the hiring party
- just cause:** the legal right to dismiss an employee or take some other action
- legislation:** a law or laws (statutes) that have been passed by a governing body
- liability:** a legal responsibility for harm done to another
- lien:** a legal claim upon another's property to satisfy a debt owed by that person
- local:** a branch of a union
- lockout:** a refusal by an employer to allow employees on the work site in a labour dispute
- master:** an employer; someone who hires another person (the servant) to work under his or her supervision
- mediation:** a process like conciliation that involves the appointment of a neutral third party to help resolve difficulties in labour negotiations
- non-competition clause:** a clause in an employment contract that restricts an employee's ability to compete with his or her former employer for a stipulated period after leaving the job
- offer:** a proposal to enter into a contract
- open shop:** a business where workers may or may not belong to a union and where non-members don't pay dues
- picket line:** a demonstration by striking workers in which the workers block access to the employer's place of business
- plaintiff:** the party bringing a legal action against another party in civil (non-criminal) court
- poisoned work environment harassment:** employment harassment in which one person is subjected to hostility and rejection by co-workers because of some perceived difference
- power of attorney:** a document giving another person authority to act on your behalf
- precedent:** a previous court decision that lower courts must follow when making decisions in similar cases
- principal:** a person who hires another person to act as his or her agent
- quid pro quo harassment:** employment harassment that involves a person in a position of authority demanding favours in return for fair or preferential treatment
- ratification:** the act of accepting responsibility for a contract by someone not previously bound by it
- secret profit:** a financial advantage received by an agent over and above what he or she is entitled to receive from the principal
- servant:** an employee; someone hired by an employer (the master) to work under his or her supervision
- shop steward:** a person elected by a local as the members' representative
- statute:** a law passed by a governing body
- statutory:** required by a statute—that is by law
- strike:** a stoppage of work organized by a union in an attempt to have its contract demands met

strike pay: payments made by a union to its striking members to replace, in part, their lost wages or salaries

tort: a civil wrong other than breach of contract

tribunal: a body with the authority to hear and decide disputes and to order an offending party to make amends

union: an organization of workers that negotiates with their employer(s) and that represents the workers in employee/employer negotiations

union shop: a business in which workers must join the union by a specified time after starting work

vertical union: a union whose members have different sorts of jobs and work for different employers but who all work in the same industry

wildcat strike: an illegal strike

wrongful dismissal: the dismissal of an employee without proper notice or just cause

Documents

Employment Standards Guide

This guide was prepared to provide general information for employees and employers. If you have further questions or require more information, please contact Employment Standards. Our offices are listed on the back of this pamphlet.

Minimum Wages

- The general minimum wage is \$5.90 per hour.¹
- For certain salespersons the minimum wages is \$236.00 per week.
- School bus drivers, an adolescent (12, 13, or 14 years old) employed on a day when required to attend school and part-time employees in certain non-profit recreation or athletic programs are entitled to not less than 2 hours pay at the minimum wage if they are employed for less than 2 hours.

All other employees are entitled to not less than 3 hours at the minimum wage if they are employed for less than 3 hours and they are available to work for the full 3 hours.

- A deduction for a meal or lodging cannot reduce the minimum wage by more than the following amounts:

\$1.95 per meal consumed and \$2.60 per day of lodging.

Payment of Earnings

Employees must be paid not later than 10 days after the end of each pay period.

When employment ends:

1. If the employer terminates an employee's employment:
 - a) with notice and/or pay in lieu of notice—pay is due not later than 3 days after the last day of work;
 - b) and no termination notice is required to be given—pay is due not later than 10 days after the last day of work;
2. If the employee terminates their own employment:
 - a) by giving a termination notice—pay is due not later than 3 days after the last day of work;
 - b) and no termination notice is required to be given—pay is due not later than 10 days after the last day of work;
 - c) and failed to give the required termination notice—pay is due not later than 10 days after the date on which the notice would have expired had it been given.

Statement of Earnings and Deductions

Employees must receive a detailed written statement of earnings and deductions for their retention each pay period.

An employer may deduct from an employee's earnings, amounts permitted by an Act, regulation, judgement, order of a court or amounts personally authorized in writing by an employee.

No deduction can be made from an employee's earnings for (i) faulty workmanship, or (ii) cash shortages or loss of property if anyone other than the employee had access to the cash or property.

Hours of Work

Hours of work must be confined within a period of 12 consecutive hours in any one day. An exception to this requirement exists for employees in the geophysical exploration and oilwell servicing industries.

¹ Note that this changed to \$7.00 per hour in September 2005.

Hours of Rest

An employer must provide at least one day of rest in each week. Rest days may be accumulated for up to 4 weeks and given as consecutive days off within this 4 week period.

Employees must receive a 1/2 hour rest period, paid or unpaid, during each shift in excess of 5 consecutive hours of work. Some exceptions apply.

Overtime and Overtime Pay

In each week, hours worked in excess of 8 per day must be totalled and the number of hours worked in excess of 44 must be calculated. The greater of the two numbers are the number of hours to be paid at the overtime rate.

An employer must pay an employee overtime pay of at least 1.5 times the employee's wage rate for overtime hours.

Note: Some exceptions apply. Refer to the Employment Standards Regulation.

Overtime Agreements

Employees and employers may enter into a written overtime agreement. With an agreement, instead of overtime pay, employees receive time off with regular pay equal to the number of overtime hours worked.

Vacations and Vacation Pay

Employees are entitled to a minimum of 2 weeks' vacation with pay after 1 year of employment and 3 weeks' vacation with pay after 5 years of employment with an employer.

Monthly paid employees are entitled to vacation pay based on their current salary.

Employees paid other than by the month are entitled to 4% of their regular wages for vacation pay. After 5 years this increases to 6%.

Employees employed less than 1 year receive 4% of their regular wages for vacation pay on termination of employment.

Vacation pay may be paid at any time, but not later than the next scheduled pay day after the employee starts vacation.

On written request of an employee, the employer may grant an employee's annual vacation in periods of not less than 1 day. The employer has final say over the time when the annual vacation is to be taken.

Employees employed in the *construction industry* or *brush clearing* are entitled to 6% of their regular wages as vacation pay.

General Holidays and General Holiday Pay

In Alberta the following are general holidays: New Year's Day; Alberta Family Day; Good Friday; Victoria Day; Canada Day; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; and any other day designated as a general holiday by the employer.

Employees who have worked for an employer 30 days in the 12 month period before the holiday are entitled to general holidays and general holiday pay.

If an employee works an irregular schedule and there is doubt about whether a general holiday falls on a day that would normally have been a work day, review the 9 week period preceding the work week in which the general holiday occurs. If the employee worked on the same day of the week as the day on which the general holiday falls in at least 5 of the 9 weeks, the general holiday is to be considered a day that would normally have been a work day for the employee.

When the holiday falls on a regular work day and the employee is not required to work, the employee will receive a regular day's pay.

If employees are required to work on the holiday and the holiday is a normal day of work, they must receive 1.5 times their regular rate of wages for each hour worked in addition to receiving a regular day's pay. Alternatively, they may be paid their regular rate for each hour worked on the holiday and receive another regular working day off with pay.

If an employee is on a regular day off and is required to work on the holiday, the employee will receive 1.5 times the regular rate of pay for all hours worked.

If a general holiday falls during an employee's annual vacation, the employer must extend the employee's vacation by one day with pay. Alternatively, by agreement, the employer must provide an additional day off with pay before the employee's next annual vacation.

Employees employed in the *construction industry or brush clearing* receive 3.6% of their regular wages as general holiday pay.

Termination of Employment

Employees wishing to terminate their employment must give the employer a written termination notice of at least:

- 1 week, if employed more than 3 months but less than 2 years
- 2 weeks, if employed 2 years or more

Employers wishing to terminate the employment of an employee must give the employee a written termination notice of at least:

- 1 week, if employed more than 3 months but less than 2 years
- 2 weeks, if employed 2 years or more
- 4 weeks, if employed 4 years but less than 6 years
- 5 weeks, if employed 6 years but less than 8 years
- 6 weeks, if employed 8 years but less than 10 years
- 8 weeks, if employed over 10 years,

or

the wages the employee would have earned for the applicable period of notice,

or

a combination of written notice and the wages the employee would have earned for the applicable period of notice.

Some exceptions apply.

Maternity and Parental Leave

The *Employment Standards Code* provides mothers, fathers, and adoptive parents with parental leave. In addition, birth mothers are eligible for maternity leave. These leaves are available to parents of children born or adopted on, or after December 31, 2000.

Eligibility Requirements

Employees must have 52 consecutive weeks of employment with their employer to be eligible for maternity and/or parental leave under the Code. This applies both to full-time and part-time employment.

If a pregnant employee has less than 52 consecutive weeks of employment, and is therefore not entitled to maternity leave, an employer cannot arbitrarily lay her off, terminate her employment, or require her to resign because of pregnancy or childbirth. Under human rights law, employers are required to accommodate the health-related consequences of an employee's pregnancy and childbirth up to the point of undue hardship, regardless of how long she has worked for the employer. Contact the Alberta Human Rights and Citizenship Commission for further information on these rights and responsibilities.

Length of Leave

- Birth mothers can take up to 52 weeks of unpaid, job-protected leave from employment, made up of 15 weeks of maternity leave and 37 weeks of parental leave.
- Fathers and adoptive parents are eligible for 37 weeks of unpaid, job-protected parental leave. Adoptive parents can take parental leave when they adopt a child under the age of 18.

If both parents are employees, the 37 weeks of parental leave may be taken entirely by one of the parents, or can be shared between the mother and father. If the leave is to be shared, the employer must be notified.

Notice Requirements

- Employees must give their employers at least six weeks' written notice to start maternity or parental leave.
- Employees must provide at least 4 weeks' written notice to return to work or to change the date they will be returning to work. This notice must be provided at least four weeks before the end of the leave to which employees are entitled.
- If an employee fails to provide the required notice or fails to report to work the day after the leave ends, the employer does not have to reinstate the employee unless the failure to notify the employer is due to unforeseen or unpreventable circumstances.

Employment of Adolescents and Young Persons

Adolescents are persons 12 but under 15 years of age. They may be employed to:

- make deliveries for a retail store
- deliver newspapers or flyers, or
- be a clerk in an office or retail store, if the employment is not injurious to the adolescent's life, health, education or welfare. The parent or guardian of any adolescent must agree to the employment and provide written consent to the employer.

Adolescents can only work 2 hours on a school day and a maximum of 8 hours on a non-school day. They cannot work between the hours of 9:00 p.m. and 6:00 a.m.

Young persons are persons 15 but under 18 years of age. They cannot be employed between the hours of midnight and 6 a.m. at, or in connection with:

- any retail store selling food or beverages or any other merchandise,
- a retail business selling gasoline or other petroleum products, or
- a motel, hotel, inn, etc.

Employment is permitted in such premises between 9:00 p.m. and midnight if the employee works with and is in the continuous presence of at least one other individual 18 years old or older.

Young persons can be employed between midnight and 6:00 a.m. in establishments such as hospitals, manufacturing plants and nursing homes, but must be in the continuous presence of one or more adults and the employer must have the written permission of the young person's parent or guardian.

Farm Workers and Domestic

Farm workers are entitled to their agreed wages; notice of termination of employment; and maternity and parental leave. Domestic employees are entitled to minimum wage; general holidays and general holiday pay; vacations and vacation pay; notice of termination of employment; maternity and parental leave; and a day of rest each week.

September 2003

¹ Employment Standards Guide, "Human Resources and Employment:" Government of Alberta, January 29, 2004. Reproduced by permission.

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